



AGENDA

GARDNER CITY COUNCIL

City Hall – 120 East Main Street -- Gardner, Kansas
Monday, October 19, 2020
7:00 p.m.

***If you wish to provide written public comment regarding any items below by email, please provide them by noon on October 19, 2020 to cityclerk@gardnerkansas.gov. The meeting will be open to the public ***

***Watch this meeting live on the City's YouTube channel at <https://www.youtube.com/user/CityofGardnerKS> ***

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PRESENTATIONS

1. Budget Update

PUBLIC HEARINGS

PUBLIC COMMENTS

Members of the public are welcome to use this time to make comments about City matters or items on the agenda that are not part of a public hearing

CONSENT AGENDA

1. Standing approval of the minutes as written for the regular meeting on October 5, 2020
2. Standing approval of City expenditures prepared September 30, 2020 in the amount of \$3,932,441.84; October 2, 2020 in the amount of \$271,144.76; and October 9, 2020 in the amount of \$3,814,604.01.
3. Consider authorizing the City Administrator to execute an amendment to the existing contract with Central Square, Inc., Central Square Payments provided by PAYA, Inc. to include Automated Clearing House (ACH) transactions
4. Consider authorizing the approval of an addendum to service contract with Asplundh Tree Expert Company
5. Consider the appointment of Nicole Beaton to the Economic Development Advisory Committee
6. Consider the appointment of George Rifford to the Economic Development Advisory Committee
7. Consider the appointment of Brandon Williams to the Economic Development Advisory Committee
8. Consider the appointment of Dennis Liss to the Public Works and Accessibility Committee
9. Consider the appointment of Julie Aldridge to the Public Works and Accessibility Committee
10. Consider the appointment of Mike Reynolds to the Public Works and Accessibility Committee
11. Consider authorizing the execution of an agreement with Progressive Electronics, Inc. for the purchase and installation of upgrades to the AV system in the Gardner City Hall Council Chambers
12. Consider authorizing the execution of an agreement with CentralSquare for the implementation of street and fleet maintenance functional groups in the Enterprise Asset Management Software
13. Consider authorizing the execution of an agreement with Building Controls and Services, Inc., for the purchase of two (2) AAON RN-Series Rooftop Units for Gardner City Hall

PLANNING AND ZONING CONSENT AGENDA

1. Consider accepting the dedication of right-of-way and easements on final plat FP-20-09 for Symphony Farms V Plat
2. Consider accepting the dedication of right-of-way and easements on final plat FP-20-08 for Regency West, First Plat

COMMITTEE RECOMMENDATIONS

1. Consider approving an ordinance amending the Preliminary Development Plan (PDP-20-04) for Regency West
2. Consider approving a conditional use permit for Regency West for a Day Care Center
3. Consider adopting an ordinance approving a rezoning from R-2 (two-Family), M-P (Mobile Home Park), and C-3 (Commercial) Districts to M-P (Mobile Home Park) District; and consider approval of the associated Preliminary Development Plan for The Lakes of Conestoga



In compliance with the Americans with Disabilities Act, the City of Gardner will provide reasonable accommodations for all public meetings. Persons requiring accommodations in attending any of our public meetings should contact the City Clerk's Office at 913-856-0945 a minimum of 48 hours prior to the meeting.



AGENDA

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4. Consider approving a conditional use permit for Lakes at Conestoga for a Manufactured/Mobile Home Park
5. Consider authorizing the execution of a contract for the Kill Creek WRRF Digester Cleanout Project

OLD BUSINESS

NEW BUSINESS

1. Consider the appointment of a City Prosecutor
2. Consider adopting an ordinance regulating traffic upon the streets, alleys and highways of the City of Gardner, Kansas; incorporating by reference the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020"
3. Consider adopting an ordinance fixing certain standards of conduct for persons within the City of Gardner, Kansas; making violation of any such standards a public offense, subject to penalty; incorporating by reference the "Uniform Public Offense Code for Kansas Cities: Edition of 2020"
4. Consider adopting a resolution amending Resolution No. 1976 authorizing the City of Gardner, Kansas, to construct improvements to certain main trafficways and trafficway connections and authorizing the issuance of General Obligation Bonds of the City to pay the costs thereof, all pursuant to K.S.A. 12-685 et seq
5. Consider a petition for the formation of a benefit district for offsite sanitary sewer improvements and 167th street improvements for the Hilltop Ridge development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge Phase One Off-site Sanitary Sewer and 167th Street Special Benefit District)
6. Consider a petition for the formation of a benefit district for certain internal site improvements for the first plat of the Hilltop Ridge development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge First Phase Street Special Benefit District)
7. Consider adopting a resolution authorizing the public sale of certain General Obligation Bonds and Notes of the City of Gardner, Kansas
8. Consider adopting a resolution approving the execution and delivery of an Amended and Restated Development Agreement for a development project within the City (Grata Development)

COUNCIL UPDATES – Oral presentation unless otherwise noted

EXECUTIVE SESSION

ADJOURNMENT



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COUNCIL ACTION FORM

COMMITTEE RECOMMENDATION NO. 4

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: ROBERT CASE, CHIEF PLANNER

Agenda Item: Consider approving a conditional use permit for Lakes at Conestoga for a Manufactured/Mobile Home Park

Strategic Priority: Economic Development

Department: Community Development

Planning Commission Recommendation:

After review of application CUP-20-02, a request for a conditional use permit for the Lakes of Conestoga, located at the southeast corner of E. Santa Fe Street and Conestoga Drive (Tax ID CF231430-1012) a staff report dated September 22, 2020 and a site plan dated September 11, 2020, the Planning Commission recommends the Governing Body approve the conditional use permit application with the following condition:

1. This Conditional Use Permit request shall not be approved prior to the approval of the preliminary development plan and associated rezoning.

Staff Recommendation:

Staff recommended that the Planning Commission approve the application CUP-20-02 with the condition as mentioned above. At the Planning Commission meeting there was discussion regarding the length of time for the permit. Section 17.03.050 (C) of the Land Development Code states:

***Effect of Decision.** Approval of a conditional use permit by the Governing Body shall authorize the applicant to apply for a building permit, and other applicable permits. Approval shall be valid for two years, and the Governing Body may grant a one-year extension; provided, that approvals for communication facilities for wireless services shall be for a term of not less than 10 years. Any application not acted upon according to the approval and conditions within this time period shall be void. Any amendment to a conditional use permit shall require the same process as the original approval. (Ord. 2546 § 1; Ord. 2518 § 2 (LDC § 3.05)).*

The initial interpretation of this section of the regulations was that approval of the permit shall be valid for 2 years. Between the Planning Commission meeting and the City Council meeting the Community Development Director reviewed common planning practice, discussed the section and interpretation with the author of the regulations and also sought advisement from the City Attorney.

Based on common planning practice and the intent as stated by the author of the regulations that the 2 year period with a one year extension was intended to serve as a "sunset clause" in cases where the conditional use was not established after approval of the CUP, staff recommends that a second condition be added to the previous recommendation as follows:

2. This conditional use permit is a permanent permit issued to the current owner - Green Courte Acquisition IV LLC. Any change of ownership / management must be reported to the City and shall require the issuance of a new CUP following the applicable CUP regulations / process at that time. Failure to follow all applicable local, state or federal regulations shall be grounds for reconsideration of the CUP and possible revocation of the permit.

Background/Description of Item:

This application is for a conditional use permit to allow approval of a 95-unit Manufactured/Mobile Home Community. Within the City of Gardner Land Development Code, a "Manufactured/Mobile/Micro Home Community" is defined as a parcel of land planned and designed for multiple home sites for the placement of manufactured, mobile or other small homes, and used for the principal dwelling of households for long-term residency. Home sites may either be located on a single lot, owned through appropriate condominium procedures, or platted for individual ownership of each site under certain conditions.

The property is currently unplatted and undeveloped. The proposed future development will be accessed from an existing collector street (Conestoga Drive) to the west and an existing private neighborhood street (Park Street) to the east. All utilities are available to this site and will be serviced by the City of Gardner. Existing sanitary sewer lines are located to the north along E Santa Fe Street, to the east of the property along proposed Private Street F, and along the southern property line. Underground electric lines exist near all property lines and existing water lines are located along the north, east, and west property lines

This infill development is located directly adjacent to existing manufactured/mobile home residential communities, with industrial and commercial type uses located to the north of the property across E Santa Fe Street and to the west of the property across Conestoga Drive, which act as a natural buffer between conflicting uses.

One of the core themes of the Comprehensive Plan is Housing Variety to support on-going investment in housing and attract new residents. The Housing Variety goal is intended to ensure that the housing stock responds to a variety of users, including young professionals, new families, empty-nesters and seniors in need of assistance. Providing a range of options allows support for all income levels to move toward home ownership.

ACTIONS

Per Section 17.03.030 (D) of the *Gardner Land Development Code*, the Governing Body may:

1. Adopt such recommendation by ordinance, (simple majority vote)
2. Override the Planning Commission's recommendation by at least a two-thirds vote of the membership of the Governing Body, or
3. Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission after considering the same may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendation, the Governing Body by a simple majority may adopt or may revise or amend and adopt such recommendation by ordinance or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of

inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

Financial Impact:

None at this time

Other Impacts:

None

Attachments included:

- Vicinity Map
- Ordinance No. 2680
- September 22, 2020 draft Planning Commission minute excerpt
- Planning Commission packet

Suggested Motion:

Adopt Ordinance No. 2680, an ordinance approving a conditional use permit on certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas (CUP-20-02), as recommended by the Planning Commission with the additional condition recommended by staff as outlined.



95228(9)
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CF4230000000001B
1.8 ac.

1000
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7.5 ac.

CF231430-1011
6.7 ac.

1009
CF231430-1012
20.1 ac.

910
CF231430-1009
41.1 ac.

ORDINANCE NO. 2680

AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT ON CERTAIN LANDS LOCATED IN THE CITY OF GARDNER, KANSAS, UNDER THE AUTHORITY GRANTED BY TITLE 17 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS (CUP-20-02).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That having received a recommendation from the Planning Commission on September 22, 2020, and proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Gardner, Kansas, Land Development Code, a Conditional Use Permit is issued on lands legally described as follows:

All that part of the Northwest Quarter of Section 30, Township 14 South, Range 23 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of said Section 30, thence S 2°13'11" E (S 0°14'48" E deeded), along the East line of the Northwest Quarter of said Section 30, a distance of 660.37 feet (660.15 feet deeded); thence S 87°57'17" W (S 89°56'30" W deeded), a distance of 1281.25 feet; thence N 1°59'24" W (N 00°00'00" E deeded), a distance of 100.00 feet; thence S 87°57'17" W (N 89°56'30" E deeded), a distance of 100.00 feet; thence N 1°58'46" W (N 00°00'00" E deeded), a distance of 561.68 feet (561.59 feet deeded) to a point on the North line of the Northwest Quarter of said Section 30; thence N 88°00'34" E (N 90°00'00" E deeded), along the North line of the Northwest Quarter of said Section 30, a distance of 1378.50 feet to the point of beginning, containing 20.7102 acres, more or less, unplatted land, subject to that part in streets and roads.

CASE NO. CUP-20-02

A Conditional Use Permit to allow for a Mobile Home Park use in the M-P (Mobile Home Park) zoning district, solely for The Lakes at Conestoga located at the southeast corner of Santa Fe Street and Conestoga Drive with the following condition:

1. This Conditional Use Permit request shall not be approved prior to the approval of the preliminary development plan and associated rezoning.
2. This conditional use permit is a permanent permit issued to the current owner - Green Courte Acquisition IV LLC. Any change of ownership / management must be reported to the City and shall require the issuance of a new CUP following the applicable CUP regulations / process at that time. Failure to follow all applicable local, state or federal regulations shall be grounds for reconsideration of the CUP and possible revocation of the permit.

SECTION TWO: That this Ordinance shall take effect and be in force from and after its adoption by the Governing Body and publication in the official City Newspaper.

APPROVED and ADOPTED this 19th day of October, 2020.

(SEAL)

CITY OF GARDNER, KANSAS

Attest:

Steve Shute, Mayor

Sharon Rose, City Clerk

**September 22, 2020 Planning Commission Meeting
CUP-20-02**

1. THE LAKES OF CONESTOGA

Located at the southeast corner of E. Santa Fe Street and Conestoga Drive

- a. **CUP-20-02:** Hold a public hearing for a conditional use permit for a 95-unit Manufactured/Mobile Home Community
- b. **Z-20-08:** Hold a public hearing for rezoning for a Manufactured/Mobile Home Community.
- c. **PDP-20-05:** Hold a public hearing for a preliminary development plan for a 95-unit Manufactured/Mobile Home Community.
- d. **PP-20-11:** Consider a preliminary plat for a 95-unit Manufactured/ Mobile Home Community.

Prior to his presentation, Mr. Case explained this CUP for The Lakes of Conestoga was being presented first because it covered the entire site whereas the previous CUP for Regency West covered only a portion of that site.

This site is currently zoned R-2, M-P and C-3 and surrounded by commercial, Conestoga Estates and undeveloped land. The parcel is indicated for Light Industrial & Office park future land use in the Comprehensive Plan and although the requested MP-3 zoning district is not a compatible zoning designation within this land use category, staff is supportive of the development request, as detailed in the staff report. The preliminary development plan shown had the homes spaced further apart from one another than a typical mobile home park. The applicant has also included some carports and extensive landscape as a buffer from Santa Fe Street and the existing Conestoga home park. Staff recommended approval of this CUP with one condition.

Mr. Curtis Holland, attorney with Polsinelli Law Firm, represented Green Courte Partners, developer. He gave a presentation describing the amenities of this development to upgrade the community. He stated the average lot per home is typically 4000 sf and in this development the average lot is 9496 sf to provide a more single-family home feel with more open space. Upon entry onto the site, there is planned a retention pond with walking trails, benches and landscape. His client agreed with the staff report and believes this project is an appropriate use for the site.

Commissioner McNeer asked if these were rented lot sites and if the homes would be owner occupied.

Mr. Holland replied the lots were ground leases and some homes were owner occupied and others rentals.

PUBLIC HEARING:

No one came forward from the public to speak.

Motion to close the Public Hearing by McNeer and seconded by Deaton.

Motion passed 7-0.

COMMISSION DISCUSSION:

Commissioner Meder asked about the CUP application included in the PC packet that was not completely filled out as all of the boxes were not checked off.

Mr. Case said he worked closely with another planner on the review of this project and Mr. Holland said if there was specifically anything missing he would provide it. He continued to state this application was thoroughly reviewed and they had several rounds of comments and submittals with the information required.

Meder wanted it on record that staff had a completed application on file.

Mr. Case stated it was in the file and everything was properly submitted.

Motion made after review of application CUP-20-02, a request for a conditional use permit for the Lakes of Conestoga, located at the southeast corner of E. Santa Fe Street and Conestoga Drive (Tax ID CF231430-1012), a staff report dated September 22, 2020 and a site plan dated September 11, 2020, the Planning Commission recommends the Governing Body approve the conditional use permit with the following condition:

- 1. This Conditional Use Permit request shall not be approved prior to the approval the preliminary development plan and associated rezoning.**

Motion by Ford and seconded by McNeer.

Motion passed 7-0.

PLANNING COMMISSION STAFF REPORT
MEETING DATE: SEPTEMBER 22, 2020
PREPARED BY: LAURA BERGEY, AICP

NEW BUSINESS ITEM NO. 2

PROJECT NUMBER / TITLE: CUP-20-02 Conditional Use Permit for Lakes of Conestoga

PROCESS INFORMATION

Type of Request: Conditional Use Permit

Date Received: August 7, 2020

APPLICATION INFORMATION

Applicant: Curtis Holland

Owner: Heather A. and Ronald E. Rutler / Karen R. and Mark W. Lewis

Parcel ID: CF231430-1012

Location: The southeast corner of E. Santa Fe Street and Conestoga Drive.

REQUESTED ACTION

The applicant is requesting approval of CUP-20-02 a Conditional Use Permit for Lakes of Conestoga, a 95 unit Manufactured/Mobile Home Community located at the southeast corner of E. Santa Fe Street and Conestoga Drive.

EXISTING ZONING AND LAND USE

The site is currently zoned R-2 (Two-Family), M-P (Mobile Home Park), and C-3 (Commercial) Districts and is agricultural in use.

SURROUNDING ZONING AND LAND USE

Zoning	Use(s)
North of subject property	
M-1 (Restricted Industrial) District	Pet Supply Store (Pets Go Here)
M-2 (General Industrial) District	Outdoor Self Storage (StorageMart)
C-3 (Heavy Commercial) District	Outdoor Self Storage (StorageMart and Attic Storage of Gardner)
	Single-Family Residential (3 unplatted homes)
MP-1 (Planned Restricted Industrial) District	Outdoor Self Storage (Gardner Auto Body & Towing and Outback Storage)
East of subject property	
M-P (Mobile Home Park) District	Mobile Home Park
South of subject property	
M-P (Mobile Home Park) District	Mobile Home Park
West of subject property	
CP-3 (Planned Commercial) District	Undeveloped land

R-2 (Two-Family Residential) District	Undeveloped land
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EXISTING CONDITIONS

The property is currently unplatted and undeveloped. The proposed future development will be accessed from an existing collector street (Conestoga Drive) to the west and an existing private neighborhood street (Park Street) to the east. All utilities are available to this site and will be serviced by the City of Gardner. Existing sanitary sewer lines are located to the north along E Santa Fe Street, to the east of the property along proposed Private Street F, and along the southern property line. Underground electric lines exist near all property lines and existing water lines are located along the north, east, and west property lines.

BACKGROUND / HISTORY

The property was annexed on March 6, 1978 per Ordinance 1337. Currently, the property is not in use. At the time the property was annexed into the City, the property was zoned for retail business uses in 1971 and 1973, and a mobile home park in 1973 by the Gardner Township Zoning Board as part of Johnson County Government. In approximately 1982, a portion of the property was rezoned to R-2 (Two-Family Residential district) but was not developed and has remained undeveloped since.

The current zoning pattern of the site shows a majority of the property is zoned C-3 (Heavy Commercial District), with a small portion of the property near the Conestoga Drive/Warren Street intersection zoned R-2 (Two-Family Residential District) and R-M (Residential Manufactured and Mobile Home Planned District).

CONSISTENCY WITH COMPREHENSIVE PLAN

The *Future Land Use Map* in the *City of Gardner 2014 Comprehensive Plan* identifies this parcel for “Light Industrial & Office Park” future land use, which is described as areas with uses primarily consisting of light manufacturing, general office, and distribution. The Industrial Areas Plan, located in the Land Use and Development chapter of the Comprehensive Plan, further defines this parcel as “Local Industrial,” which is defined as “smaller pockets of manufacturing and light industrial operations that have a close relationship to adjacent residential or commercial areas and require unique strategies to ensure that they remain vital, and do not negatively impact nearby uses.” Although the requested change is not entirely in conformance to the amended Future Land Use Map, the parcel subject to this project has been identified as “Light Industrial & Office Park,” in which the MP-3 zoning district is not a compatible zoning designation within that land use category. However, staff is supportive of the development request for the following reasons:

- The proposed site is located directly adjacent to existing manufactured/mobile home residential communities, with industrial and commercial type uses located to the north of the property across E Santa Fe Street and to the west of the property across Conestoga Drive, which act as a natural buffer between conflicting uses. With the approval of this request, the proposed development will be a continuation of the already existing residential development of the immediate surrounding area. Additional landscaping and design features have been provided by the applicant along the public right-of-way to enhance the buffer between uses.
- The development, as proposed, will provide affordable and attainable housing options for the people residing and working in the City of Gardner.

Although the proposed zoning district is not consistent with the designated future land use description, this planned development meets other Comprehensive Plan goals, and is supported by data in other plans, as follows:

- One of the core themes of the Comprehensive Plan is Housing Variety to support on-going investment in housing and attract new residents. The Housing Variety goal is intended to ensure that the housing stock responds to a variety of users, including young professionals, new families, empty-nesters and seniors in need of assistance. Providing a range of options allows support for all income levels to move toward home ownership. Specifically the housing objectives that are addressed by this development include:
 - a. Establish land use and development controls that promote high quality residential buildings and encourage construction of single-family housing options for families that want to move up, but stay in the community;
 - b. Ensure existing residential areas are well-protected from commercial and industrial land uses through the use of buffers and screening;
 - c. Ensure new residential developments are sited within close proximity and access to schools and parks.

STAFF ANALYSIS – ZONING

This section highlights contents of the application which may merit particular consideration in regard to zoning intent and standards. If a standard is not presented, it has been met. Standards not met will be addressed in conditions of approval at the end of this report. A full analysis to all applicable regulations is available on request.

This application is for a conditional use permit to allow approval of a 95 unit Manufactured/Mobile Home Community. Within the City of Gardner Land Development Code, a “Manufactured/Mobile/Micro Home Community” is defined as a parcel of land planned and

designed for multiple home sites for the placement of manufactured, mobile or other small homes, and used for the principal dwelling of households for long-term residency. Home sites may either be located on a single lot, owned through appropriate condominium procedures, or platted for individual ownership of each site under certain conditions.

17.03.050(B) Review Criteria:

1. The application furthers the intent of the proposed zoning district and does not conflict with the intent of any abutting districts.

Staff Comment: *While the subject property is not yet currently zoned to support the uses of the proposed conditional use permit, should the corresponding proposed rezoning (Z-20-08) be approved, the application furthers the intent of the zoning district by providing a form of affordable and attainable housing for the City of Gardner. Because the site is surrounded by complimentary zoning districts and land uses, the proposed use does not conflict with the intent of adjacent districts.*

2. Compliance of any proposed development with the requirements of this Code.

Staff Comment: *Although a final development plan has yet to be approved, a corresponding preliminary development with associated rezoning will be considered at this public hearing, where intent, land use, and design features such as site layout, open space and civic features, parking, and landscaping, will be discussed and considered. Given this circumstance, the preliminary development plan and associated rezoning, as submitted, are in compliance with the requirements of this code. However, this request shall not be approved prior to the approval of these items. This is a condition of approval.*

3. Whether any additional site-specific conditions are necessary to meet the purposes and intent of this Code and the intent or design objectives of any applicable subsections of this Code.

Staff Comment: *No additional site-specific conditions are necessary to meet the purposes and intent of the City of Gardner LDC and the intent or design objectives of any subsections of the Code.*

4. The impact on the public realm, including the design and functions of streetscapes and relationships of building and site elements to the streetscape.

Staff Comment: *The proposed use does, as submitted, not have an impact on the public realm with regard to design and functions of streetscapes and relationships of the building and site elements to the streetscape. Although a final landscape plan has yet to be approved, the applicant has proposed to meet all requirements of the Local-Neighborhood street requirements and has provided appropriate spacing for landscaping and street trees between the curb and sidewalk. A final landscape plan will be approved with the final development plan, addressing site relationship with the public realm with street trees, frontage landscape design, and pedestrian connection. Additionally, building façades will be approved during this time as well, to ensure compatible, attractive, and diverse features that are in scale with surrounding buildings.*

5. The adequacy of drainage, utilities and other public facilities.

Staff Comment: *The function of drainage, utilities, and other public facilities have been reviewed and recommended for approval in the preliminary development plan and will be considered at this public hearing. The use proposed by the applicant does not impact drainage, utilities, or other public facilities on the site or to surrounding development.*

6. Compatibility with the character of the area in terms of building scale, building form, landscape and site design.

Staff Comment: *The surrounding area is characterized with single-story residential structures, and single- and double-story commercial/industrial structures. The proposed single-story residential structures are compatible with the scale and character of surrounding development patterns, landscape, and site design.*

7. Compatibility with the area in terms of operating characteristics such as hours of operation, visible and audible impacts, traffic patterns, intensity of use as proposed or foreseeable, and other potential impacts on adjacent property.

Staff Comment: *The proposed use for this site is compatible with the area in terms of operating characteristics with regard to hours of operations, visible and audible impacts, traffic patterns, intensity of use as proposed or planned, and other potential impacts on adjacent property. The proposed use, as planned, will have no negative impact on adjacent homes or businesses and includes attractive site design, landscaping, and features that will enhance the surrounding area's character.*

8. The application will not prevent development and use of the neighboring property in accordance with the applicable development regulations.

Staff Comment: *The application, if approved, will not prevent development or the use of neighboring property in accordance with applicable development regulations. The proposed use is compatible and in character with surrounding zoning and land use.*

9. The long range plans applicable to the site and surrounding area are not negatively impacted considering the permanence of the proposed use, the permanence of existing uses in the area, and any changes in character occurring in the area.

Staff Comment: *The likelihood of long range plans applicable to the site and surrounding area being negatively impacted considering the permanence of the proposed use, the permanence of existing uses in the area, and any changes in character occurring in the area is low. Although the requested change is not entirely in conformance to the amended Future Land Use Map presented in the Industrial Areas Plan. The parcel subject to this project has been identified as "Light Industrial and Office Park", in which the MP-3 zoning district is not a compatible zoning designation within that land use category. However, staff is supportive of the development request for the following reasons:*

- The proposed site is located directly adjacent to existing manufactured/mobile home residential communities, with industrial and commercial type uses located to the north of the property across E Santa Fe Street and to the west of the property across Conestoga Drive, which act as a natural buffer between conflicting uses. With the approval of this request, the proposed development will be a continuation of the already existing residential development of the immediate surrounding area. Additional landscaping and design features have been provided by the applicant along the public right-of-way to enhance the buffer between uses.*
- The development, as proposed, will provide affordable and attainable housing options for the people residing and working in the City of Gardner.*

It is important to note that the manufactured/mobile home community located directly adjacent to the east and the proposed development are owned by the same entity and has recently been upgraded to include site improvements, landscaping, and community features.

10. The recommendations of professional staff.

Staff Comment: *Staff is recommending approval of the application.*

STAFF ANALYSIS – INFRASTRUCTURE / OTHER

ELECTRIC

Underground electric lines are currently installed along all property lines and is to be extended into the property to serve the future development. Electric easements have been provided as requested.

SANITARY SEWER

The subject property is within the City of Gardner sanitary sewer service area. Sanitary sewer service will be extended into the property through 8" sanitary sewer lines to serve the future development. Sanitary Sewer easements have been provided as requested.

WATER

Existing water lines are located adjacent to the site and will be extended into the property through 8" water lines to serve the future development. Appropriate easements have been provided as requested.

STORM WATER

A stormwater retention basin was included with the preliminary development plan to address stormwater for the entire development. The function of the retention basin was reviewed by Public Works and determined the size of the retention basin was adequate to capture onsite development runoff.

ROADWAY NETWORK; VEHICULAR ACCESS; SIDEWALKS

The applicant is planning to extend Park Street (adjacent existing private street with temporary cul-de-sac) west throughout the development to connect with Conestoga Drive (collector street) and will construct five (5) internal private street networks within the subject property, Private Streets B, C, D, E, and F, that extend south and provide individual home site access. The applicant has proposed a 5' sidewalk to be installed on both sides of all internal streets in accordance with the Local – Neighborhood Street requirements. Additionally, it was requested for the applicant to provide sidewalk connections along Santa Fe Street that connect to existing sidewalks along Conestoga Drive and to adjacent properties.

FIRE SERVICE

Fire service is provided by Johnson County Fire District 1

ATTACHMENTS

- I. Preliminary Development Plan
- II. Application
- III. Public Notice and Notice Map

ACTIONS

Per Section 17.03.010 (G) of the *Gardner Land Development Code*, a review body may take the following actions (or recommend the following actions):

1. Approve the application.
2. Approve the application with conditions or modifications to lessen or mitigate a potential impact from the proposed application.

3. Deny the application.
4. Continue the application to allow further analysis. The continued application shall not be more than 60 days from the original review without consent of the applicant. No application shall be continued more than once by each review body without consent of the applicant.

EFFECT OF DECISION

Conditional Use Permit – Approval of a conditional use permit by the Governing Body shall authorize the applicant to apply for a building permit, and other applicable permits. Approval shall be valid for two years, and the Governing Body may grant a one-year extension; provided, that approvals for communication facilities for wireless services shall be for a term of not less than 10 years. Any application not acted upon according to the approval and conditions within this time period shall be void. Any amendment to a conditional use permit shall require the same process as the original approval.

RECOMMENDATION

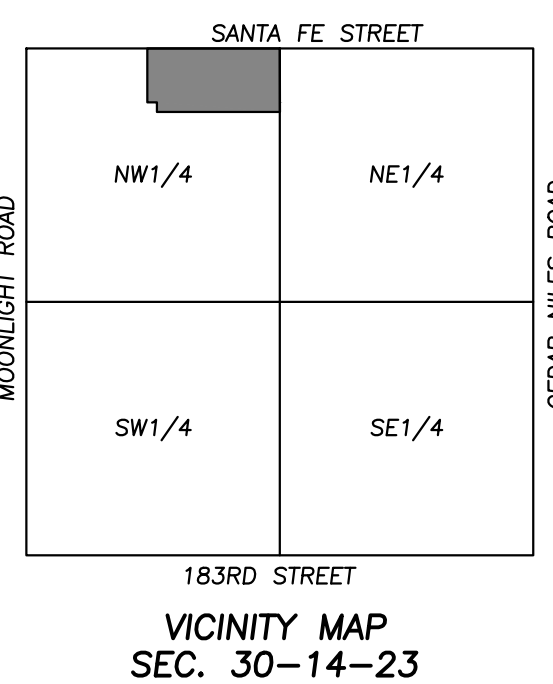
Staff recommends the Planning Commission recommend approval of application CUP-20-02, a request for a conditional use permit for the Lakes of Conestoga, located at the southeast corner of E. Santa Fe Street and Conestoga Drive (Tax ID CF231430-1012), a staff report dated September 22, 2020 and a site plan dated September 11, 2020, to the Governing Body with the following condition:

1. This Conditional Use Permit request shall not be approved prior to the approval of the preliminary development plan and associated rezoning.

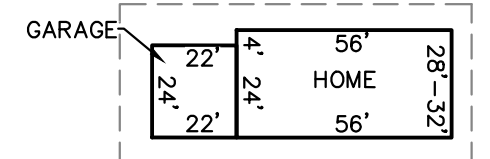
Recommended Motion:

After review of application CUP-20-02, a request for a conditional use permit for the Lakes of Conestoga, located at the southeast corner of E. Santa Fe Street and Conestoga Drive (Tax ID CF231430-1012) a staff report dated September 22, 2020 and a site plan dated September 11, 2020, the Planning Commission recommends the Governing Body approve the conditional use permit application with the following condition:

1. This Conditional Use Permit request shall not be approved prior to the approval of the preliminary development plan and associated rezoning.



SCALE: 1"=2000'



LEGEND

- PL PROPERTY LINE
- LL LOT LINE
- R/W RIGHT-OF-WAY
- ASPHALT PAVEMENT
- CONCRETE SIDEWALK
- ASPHALT TO BE REMOVED
- NO PARKING/FIRE LANE STRIPING
- FIRE LANE SIGN
- STREET LIGHT
- EXAMPLE TWIN FOOTPRINT
- 6' WROUGHT IRON FENCE

OWNER/DEVELOPER:

GREEN COURTE ACQUISITION IV, LLC
303 WEST MADISON STREET, SUITE 1500
CHICAGO, IL 60606
(312) 966-3824
CONTACT: JIM MURRAY

CIVIL ENGINEER:

PHelps ENGINEERING, INC.
1270 N. WINCHESTER
OLATHE, KS 66061
913-393-1155 OFFICE
913-393-1166 FAX
CONTACT: JUDD CLAUSSEN, P.E.
EMAIL: jclausse@phelpsengineering.com

FLOOD NOTE:

THIS PROPERTY LIES WITHIN ZONE X, DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON THE FLOOD INSURANCE RATE MAP PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE CITY OF GARDNER, COMMUNITY NO. 200164, JOHNSON COUNTY, KANSAS, MAP NO. 20091001216, AND DATED AUGUST 3, 2009.

LEGAL DESCRIPTION:

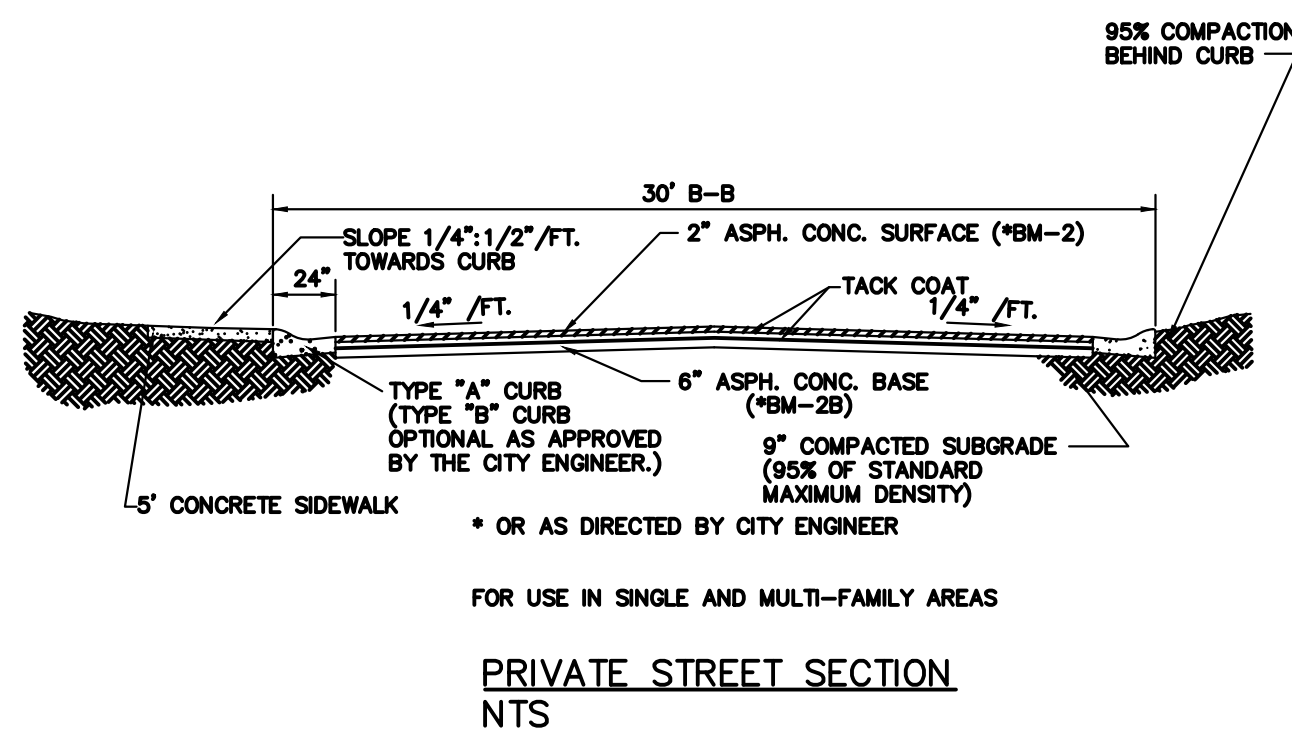
All that part of the Northwest Quarter of Section 30, Township 14 South, Range 23 East, in the City of Gardner, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of said Section 30, thence S 21°31'11" E (S 014°48'E deeded), along the East line of the Northwest Quarter of said Section 30, a distance of 660.37 feet (660.15 feet deeded); thence S 87°57'17" W (S 89°56'30" W deeded), a distance of 1281.25 feet; thence N 1°59'24" W (N 00°00'00" E deeded), a distance of 100.00 feet; thence S 87°57'17" W (N 89°56'30" E deeded), a distance of 100.00 feet; thence N 1°58'46" W (N 00°00'00" E deeded), a distance of 561.68 feet (561.59 feet deeded) to a point on the North line of the Northwest Quarter of said Section 30; thence N 88°00'34" E (N 80°00'00" E deeded), along the North line of the Northwest Quarter of said Section 30, a distance of 1378.50 feet to the point of beginning, containing 20.7102 acres, more or less, unplatted land, subject to that part in streets and roads.

GROSS AREA = ±20.7102 ACRES / ±902,136 SQ.FT.
NET AREA = ±20.0772 ACRES / ±874,563 SQ.FT.

NOTES:

- ALL PRIVATE STREETS DESIGNED TO CRITERIA FOR LOCAL-NEIGHBORHOOD.
- ALL STREET AND SITE MAINTENANCE FOR LOT 1, TO BE PROVIDED BY OWNER.



Parking Summary

Mobile Homes	
Driveway Parking Provided (2 per Unit)	190 Spaces
Surface Parking Provided	12 Spaces
Garage Parking Provided (50%)	100 Spaces
Total Parking Provided	302 Spaces
Number of Parking Spaces per Unit Provided	3.18
Handicap Parking Spaces Provided	1 Spaces
Total Parking Required	190 Spaces
Number of Parking Spaces per Unit Required	2.00
Handicap Parking Spaces Required	1 Spaces

Open Space Calculations

Requirement of Open Space	200 Sq. Ft. x 95 Units = 19,000 Sq. Ft./0.44 Ac.
Requirement of Open Space	15% = 33,320 Sq. Ft./3.11 Ac.*
Open Space Provided	12% = 107,785 Sq. Ft./2.47 Ac.

Building and Lot Data	PROPOSED	REQUIRED	CITY ORDINANCE NO.
Site Area (Gross)	20.7 Ac.	15.0 Ac. (Min.)	18.55.040.A
Existing Zoning	R-2, C-3, M-P		
Proposed Zoning	M-P		
Number of Units	95 units		
Density (Units / Acre)	4.6	6.0 (Max.)	18.55.070.B
Average Lot Area per Unit	9,496 SF/Unit	4,000 SF/Unit	18.55.070.B
Exterior Lot Setback	25 feet	25 feet	18.30.060.A
Front Setback	25 feet	25 feet	18.30.060.B
Side Setback	25 feet	5 feet	18.30.060.C
Rear Setback	25 feet	25 feet	18.55.070.E
Building Separation	20 feet	20 feet	
Building Height		35 feet(Max.)	

PRELIMINARY DEVELOPMENT PLAN (PDP-20-05)

THE LAKES OF CONESTOGA
1009 E SANTA FE STREET
GARDNER, KS

PHelps ENGINEERING, INC.
1270 N. Winchester
Olathe, Kansas 66061
(913) 393-1155
Fax: (913) 393-1166
www.phelpsengineering.com



SHEET

C2.0



CONDITIONAL USE PERMIT APPLICATION

Pre-App Date _____
Fee _____
File No. _____

OWNER INFORMATION

Name(s) Heather A. and Ronald E. Rutler / Karen R. and Mark W. Lewis
Contact _____
Address 17767 S. Laverty Street / 5 Tara Road
City Olathe / St. Joseph State KS / MO Zip 66062 / 64507
Phone _____ Email _____

APPLICANT/AGENT INFORMATION

Name(s) Green Courte Acquisition IV, LLC, by Polsinelli PC, its agent
Contact Curtis M. Holland
Address 900 W 48th Place, Suite 900
City Kansas City State MO Zip 64112
Phone 913-234-7411 Email cholland@polsinelli.com

SITE & PROPOSED USE INFORMATION

Property Address/Location 1009 E Santa Fe Street
Legal Description (Attach If Necessary) see attached
Total Site Area 20.7 acres Present Zoning R-2, C-3, M-P
Present Land Use Agriculture Proposed Land Use Mobile Home Park
Will The Use Include New Buildings or Utilize Existing Buildings _____
Proposed Building Type(s) _____
Anticipated daily traffic _____
Hours of operation/Duration of use (if temporary) _____
Anticipated external sensory impacts (such as sound, odor, residue, etc.) _____



SIGNATURE

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(Circle One)** of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for conditional use permit as indicated above.

Signature(s): Curtis M. Hollans Date 8/7/2020

Date _____

CONDITIONAL USE PERMIT APPLICATION CHECKLIST

APPLICATION SUBMITTAL REQUIREMENTS

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Complete application packet |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Application fee |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. 10 complete sets of a full sized site plan printed and folded |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Digital copies (PDF) of the completed application, plans, and legal description (Word) |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Sign posting affidavit |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Copies of any other applicable license/permits |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Final Stormwater Management Plan (2 printed and 1 digital copy) |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Final Traffic Impact Study (TIS) as required by the Access Management Code. (2 printed and 1 digital copy) |

SITE PLAN REQUIREMENTS

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Vicinity map to scale with north point showing railroads, major streams or rivers, and public streets in the vicinity of the site. (Suggested scale of 1" = 1000'.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Boundary lines of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances). |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Scale, legend, and north arrow clearly shown, with orientation at top or left as north (not less than 1"=100' scale). |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Dates of plan preparation and/or plan revisions. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Ownership, zoning, and land use of the site and surrounding properties within 200 feet; both existing and proposed. |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plan (i.e. developer, property owner, architect, landscape architect, planner, engineer, surveyor, etc.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Setback lines: building and parking with dimensions in feet. |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Setback lines: building and parking with dimensions in feet. |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Lots and tracts identified clearly , with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet and acres. |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Note on the plan indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts. |

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Setback lines: building and parking with dimensions in feet. |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Location of existing open space, alleys, parks, streams, ponds, vegetation or other similar features within plan area, and whether they are to be retained or removed. |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Existing utilities , including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection. |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Proposed street network , including right-of-way, bearings, tangents, dimensions, and horizontal and vertical curvature data along the centerline of each street. |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. All public streets within the plan conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications. Design of crosswalks, on street parking, shoulder, pavement and lane dimensions. |
| <input type="checkbox"/> | <input type="checkbox"/> | 16. Intersection site distance analysis. |
| <input type="checkbox"/> | <input type="checkbox"/> | 17. Driveways, parking lots and stalls, aisles, and loading and service areas and docks and dimensions. |
| <input type="checkbox"/> | <input type="checkbox"/> | 18. Median breaks and turning lanes , including sizes and radii; both existing and proposed. |
| <input type="checkbox"/> | <input type="checkbox"/> | 19. Vehicle maneuvering/turning templates reflecting the site can accommodate a minimum SU-30 class vehicles (for emergency access to all areas of the site), and the appropriate site-design vehicle for any other special areas of the site (such as delivery or dock areas, etc.), as necessary. |
| <input type="checkbox"/> | <input type="checkbox"/> | 20. Existing and proposed sidewalks and/or trail locations including proposed widths. |
| <input type="checkbox"/> | <input type="checkbox"/> | 21. Proposed utilities , including approximate location of sanitary sewer, water main, and street lights. |
| <input type="checkbox"/> | <input type="checkbox"/> | 22. Existing and proposed easements with dimensions. Existing easements shall be labeled with book and page number. |
| <input type="checkbox"/> | <input type="checkbox"/> | 23. Any area within a federally designated floodplain. Location, stations, and elevations of the 100-year floodplain within the plan area and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991). |
| <input type="checkbox"/> | <input type="checkbox"/> | 24. Stream corridor boundary and dimensions. |
| <input type="checkbox"/> | <input type="checkbox"/> | 25. Phasing Plan , if applicable. |
| <input type="checkbox"/> | <input type="checkbox"/> | 26. Planned amenities , such as fountains, art, outdoor seating, waste receptacles, etc. |
| <input type="checkbox"/> | <input type="checkbox"/> | 27. Any buildings within the plan area which are existing or proposed, with status indicated including dimensions (i.e. to remain, remodel, new, to be demolished as part of Phase 2, etc.). |
| <input type="checkbox"/> | <input type="checkbox"/> | 28. Distances between all buildings , between buildings and property lines, and between parking areas and property lines. |

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 29. Existing Topography and Proposed Grading of the area contained in the plan area and within 20 feet of the boundary shown by 2-foot contour intervals. Contour lines shall be legible but not overpowering. |
| <input type="checkbox"/> | <input type="checkbox"/> | 30. Building elevations depicting the architectural style, size, exterior construction materials, and colors for each type of building proposed, and dimensions. If an architectural theme is planned, elaboration on the intent and extent of the scheme and details shall be provided. Elevations shall provide sufficient information to determine relationships between various elements, building height, proportion, bedroom counts, approximate square footage, etc. Rooftop and ground-mounted mechanical equipment shall be shown on elevations. |
| <input type="checkbox"/> | <input type="checkbox"/> | 31. Screen walls, fences, trash enclosures, and mail kiosks (existing and proposed), including location, height, and materials. |
| <input type="checkbox"/> | <input type="checkbox"/> | 32. Table indicating lots, land areas, buildings, number of stories, building coverage, and all other quantities relative to the submitted plan that are required to determine compliance with City codes. For commercial buildings, indicate service floor areas and number of tenant spaces, if applicable. For residential buildings, indicate dwelling units; if multiple building types, provide an additional table indicating dwelling units by building type. |
| <input type="checkbox"/> | <input type="checkbox"/> | 33. Table indicating required and proposed parking spaces. |
| <input type="checkbox"/> | <input type="checkbox"/> | 34. Landscaping plan and table indicating all proposed landscaping, noting common and botanical names, numbers, and planting sizes. Note all other areas to be sodded. |
| <input type="checkbox"/> | <input type="checkbox"/> | 35. All exterior sign locations. Include elevations and details. |
| <input type="checkbox"/> | <input type="checkbox"/> | 36. All outside lighting facilities: Location, height, wattage, and type including shielding, for buildings, parking lots and outdoor storage areas. |
| <input type="checkbox"/> | <input type="checkbox"/> | 37. Outdoor storage areas, including location, dimensions and design. |
| <input type="checkbox"/> | <input type="checkbox"/> | 38. Planned amenities, such as fountains, art, outdoor seating, waste receptacles, etc. |
| <input type="checkbox"/> | <input type="checkbox"/> | 39. Preliminary design and location of all proposed storm drainage conveyance, detention and treatment facilities and locations of existing drainage facilities. |

I hereby submit all information required for a conditional use permit application review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted.



Signature of Applicant

8/7/2020

Date



BUSINESS & ECONOMIC DEVELOPMENT

September 2, 2020

Dear Property Owner:

The Gardner Planning Commission will hold their regular meeting on **Tuesday, September 22, 2020, beginning at 7:00 p.m.**, in the Council Chambers at Gardner City Hall, 120 E. Main Street. The following items may be of interest to you:

CUP-20-02: Proposed conditional use permit for a Manufactured/Mobile Home Community on approximately 20 acres, located at the southeast corner of E. Santa Fe Street and Conestoga Drive in Gardner. (Tax ID CF231430-1012); and

Z-20-08 (PDP-20-05): Proposed rezoning of approximately 20 acres from R-2 (Two-Family Residential District), M-P (Mobile Home Park District), and C-3 (Commercial District) to M-P (Mobile Home Park District) and associated Preliminary Development Plan for the Lakes of Conestoga, a 96 unit Manufactured/Mobile Home Community, located at the southeast corner of E. Santa Fe Street and Conestoga Drive in Gardner. (Tax ID CF231430-1012).

Conditional Use Permit and Rezoning requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcomed and encouraged.

A complete legal description for this property is available at the City of Gardner Business & Economic Development Department at Gardner City Hall, 120 E. Main Street, Monday - Friday from 8:00 a.m. - 5:00 p.m. If you have questions relating to this matter, please contact me at 405-630-5217.

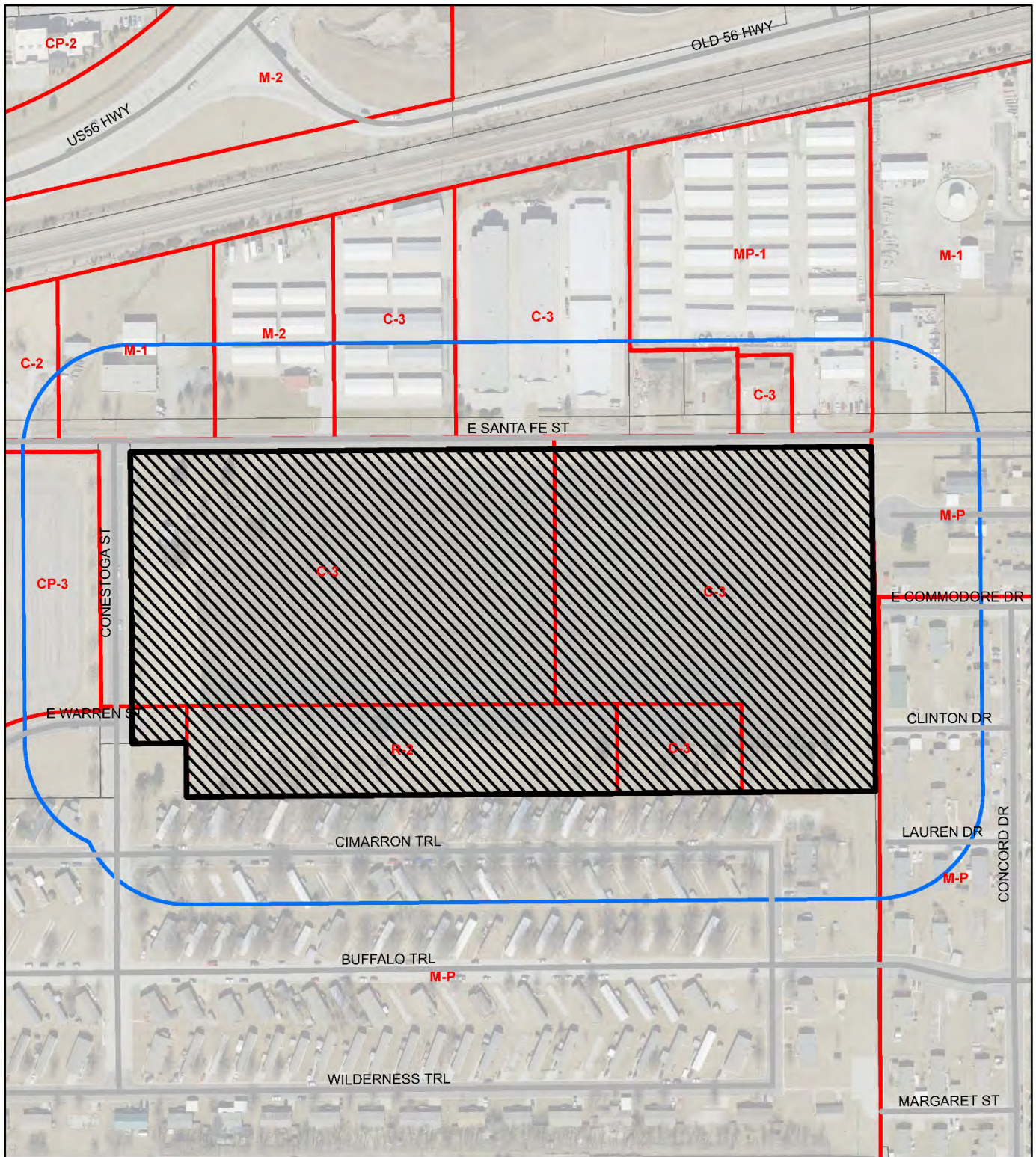
After the Planning Commission makes a recommendation, property owners within 200' of the subject area, 1000' in the county, may submit a protest petition against such recommendation. The protest petition must be filed with the City Clerk, within 14 days of the conclusion of the public hearing. For more information contact the Business & Economic Development Department.

PLEASE NOTE: If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Laura Bergey, AICP
Planner

Enclosure



N



Gardner Planning Commission

CUP-20-02: Conditional Use Permit for a Manufactured/Mobile Home Community

Z-20-08: Rezoning from R-2, M-P, and C-3 to M-P for Lakes of Conestoga

Meeting Date: September 22, 2020



Subject Property



200' Buffer



Zoning

COUNCIL ACTION FORM COMMITTEE RECOMMENDATION No. 5

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

Agenda Item: Consider authorizing the execution of a contract for the Kill Creek WRRF Digester Cleanout Project

Strategic Priority: Fiscal Stewardship
Infrastructure and Asset Management

Department: Utilities – Wastewater Division

Board/Committee Recommendation:

On October 1, 2020, the Utility Advisory Commission approved a recommendation to the City Council to authorize a contract with Synagro Central, LLC in an amount not to exceed \$123,930.27 for the Kill Creek WRRF Digester Cleanout Project, WW1808.

Staff Recommendation:

Staff recommends authorizing the execution of a contract with Synagro Central, LLC in an amount not to exceed \$123,930.27 for the Kill Creek WRRF Digester Cleanout Project.

Background/Description of Item:

The Kill Creek Wastewater Resource Recovery Facility has been in operation for approximately 20 years. The facility has 2 aerobic digesters that allow organics and inorganics to grow and accumulate. The remaining solid compounds in the sludge are composed of inert organic compounds that are then processed through the belt press. Over the years of operation, these organic and inorganic compounds accumulate and reduce the capacity/volume of the digesters. The introduction and use of flushable wipes by residents within the City have contributed to this accumulation. The 2 digesters have never been cleaned over the life of the plant.

Bidding Process:

The Request for Proposals was advertised on the City of Gardner website, Drexel website and The Legal Record, from August 12th to August 28th 2020. A total of 4 companies provided proposal packages for the Digester Cleanout Project. Staff has reviewed the proposal presented by Synagro and they meet and exceed all of the requirements set out in the Request for Proposals. The Synagro team is highly qualified to implement the project and meet the timelines required to perform this project.

Vendor	Total Cost
Synagro Central, LLC	\$123,930.27
Hodges Farm & Dredging, LLC	\$149,500.00
Customized Environmental Solutions, Inc.	\$165,000.00
Hydro-Klean, LLC	\$223,348.28

Financial Impact:

Funding for the project is available from the Wastewater Fund balance.

Attachments included:

- a. October 1, 2020, UAC Draft Meeting Minutes Excerpt
- b. Synagro Central RFP Response
- c. Agreement between City & Contractor

Suggested Motion:

Authorize the City Administrator to execute a contract with Synagro Central, LLC in an amount not to exceed \$123,930.27 for the Kill Creek WRRF Digester Cleanout Project, WW1808.

**RECORD OF PROCEEDINGS
OF THE UTILITY ADVISORY COMMISSION
GARDNER, KANSAS
Page No. 2020-20
October 1, 2020**

The Utilities Advisory Commission of Gardner, Kansas, met in Regular Session on October 1, 2020, at City Hall. Present were Chairman Gary Williams, Vice-Chairman Kristina Harrison, Commissioner Jake Wells, Utilities Department Director Gonzalo Garcia and Administrative Assistant Erin Groh. Commissioners Barbara Coleman and Bryce Augustine were not in attendance.

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Chairman Gary Williams.

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. **Standing approval of the minutes as written for the August 6, 2020, meeting of the Utility Advisory Commission.**

Motion by Vice-Chairman Harrison, seconded by Commissioner Wells, to approve the Consent Agenda.

Motion carried 3-0 Aye

OLD BUSINESS

NEW BUSINESS

1. **Consider a recommendation to the City Council to award a contract for the Kill Creek Wastewater Resource Recovery Facility Digester Cleanout Project, Project No. WW1808.**

Director Garcia gave the staff report and discussed the need for the cleaning of digester located at the Kill Creek Wastewater Resource Recovery Facility. The facility has been in operation for approximately 20 years and over the years, organic and inorganic compounds accumulate and reduce the capacity/volume of the digesters. The two digesters have never been cleaned over the life of the plant.

Vice-Chairman Harrison asked Scott Millholland, Kill Creek WRRF Superintendent, if he felt it was time for the digesters to be cleaned. Mr. Millholland responded that we are in line with when we need to be cleaning the digesters out. He stated that after 20 years of use, and the introduction of flushable wipes which get tangled up with hair, it has caused the digesters to lose capacity.

Motion by Commissioner Wells, seconded by Vice-Chairman Harrison, to forward a recommendation to City Council to award a contract to Synagro Central, LLC for the Kill Creek Wastewater Resource Recovery Facility Digester Cleanout Project, Project No. WW1808 in an amount not to exceed \$123, 930.27 for the cleaning of the Kill Creek WRRF Digester Cleanout Project, Project No. WW1808.

Motion carried 3-0 Aye

Proposal to Provide Kill Creek Water Resource Recovery Facility Digester Cleanout

to the

City of Gardner, Kansas



Submitted on
August 28, 2020



435 Williams Court, Suite 100
Baltimore, MD 21220
www.synagro.com



AUGUST 28, 2020

City of Gardner
Utilities Department
1150 E. Santa Fe St.
Gardner, KS, 66030.

Re: Kill Creek Water Resource Recovery Facility Digester Cleanout RFP

Ladies and Gentlemen:

Synagro Central, LLC (Synagro) is pleased to respond to the City of Gardner's Request for Proposal for the Kill Creek Water Resource Recovery Facility Digester Cleanout project. We have enclosed for your review our completed bid forms and qualifications information.

Having been in business for over 40 years, Synagro is one of the largest residuals management companies in the country with over 650 municipal and industrial customers and operations in 33 states. We provide various biosolids and residuals management services to water and wastewater treatment plants and have extensive equipment and personnel resources to perform land application of biosolids for the City of Gardner and the Kill Creek Water Resource Recovery Facility Digester Cleanout.

Thank you for the opportunity to submit our bid for this project. If you have any questions about our submittal or require any additional information, please contact me at (772) 971-6286 or eday@synagro.com. We look forward to hearing from you soon.

Warm regards,

Erika Day

Erika Day
Area Sales Manager

ED:sd



BID BOND

PROJECT # WW1808

KNOW ALL MEN BY THESE PRESENTS, that Synagro Central, LLC as Principal, hereinafter called the Principal, and Berkley Insurance Company a corporation duly organized under the laws of the State of Delaware as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Gardner Kansas, as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid Dollars (\$ 5% of Amount Bid), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the following project:

PROJECT: KILL CREEK DIGESTER CLEANOUT

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this/her obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this/her 19th day of August, 2020.

[SEAL]

Synagro Central, LLC

Matt Robo

[Contractor/Principal]

CHIEF COMMERCIAL OFFICER

[Title]

ATTEST:

E. A. K...

[Secretary]

Sales Support Manager

[SEAL]

Annette Audinot

Witness as to Surety

Berkley Insurance Company

[Surety Company]

By:

Kelly O'Malley

[Attorney-in-fact]

BERKLEY INSURANCE COMPANY

STATUTORY BALANCE SHEET

DECEMBER 31, 2019

(AMOUNTS IN THOUSANDS)

Admitted Assets

Bonds	\$	9,464,380
Common & Preferred Stocks		4,216,035
Cash & Short Term Investments		828,890
Premiums Receivable		1,771,259
Other Assets		<u>3,613,986</u>
<u>Total Admitted Assets</u>	\$	<u>19,894,550</u>

Liabilities & Surplus

Loss & LAE Reserves	\$	10,255,713
Unearned Premium Reserves		2,815,353
Other Liabilities		<u>810,422</u>

<u>Total Liabilities</u>	\$	<u>13,881,488</u>
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Common Stock	\$	43,000
Preferred Stock		10
Additional Paid In Capital		2,914,492
Unassigned Surplus		<u>3,055,560</u>

<u>Total Policyholders' Surplus</u>	\$	<u>6,013,062</u>
-------------------------------------	----	------------------

<u>Total Liabilities & Surplus</u>	\$	<u>19,894,550</u>
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Officers:

President: William Robert Berkley, Jr.
Secretary: Ira Seth Lederman
Treasurer: Richard Mark Baio
Asst. Treasurer: Bertman Adam Braud, Jr.
Asst. Treasurer: Ann Marie Collins
Asst. Treasurer: Susan Paula Tingleff

Directors:

William Robert Berkley
(Executive Chairman)
William Robert Berkley, Jr.
Ira Seth Lederman
Richard Mark Baio
Paul James Hancock
Carol Josephine LaPunzina
James Gerald Shiel

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Kristin S. Bender; Annette Audinot; Kelly O'Malley; April D. Perez; Jessica Innotta; or Megan Schlueter of Marsh USA, Inc. of Morristown, NJ* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 11th day of July, 2019.

Attest:

(Seal)

By

Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By

Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 11th day of July, 2019, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDRAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

Maria C. Rundraken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 19th day of August, 2020

(Seal)

Vincent P. Forte
Vincent P. Forte

July 30, 2020

Delegation of Authority

FROM: Matt Robertson, Chief Commercial Officer

TO: Emil Kneis, Sales Support Manager

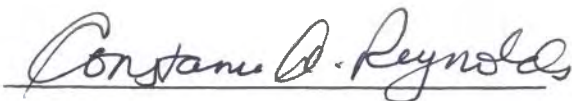
In consideration of the closing of our corporate office in response to the COVID-19 pandemic and in anticipation of continued disruption in normal company procedures, I, Matt Robertson as Chief Commercial Officer of Synagro Technologies, Inc. and all of its affiliates and subsidiaries, hereby delegate to you, Emil Kneis, authority to sign binding bids and awarded contracts as an officer or as an authorized person. Such authority does not alter our internal approval processes. This delegation of authority is valid from the date of this letter until revoked by me.



Matt Robertson

Chief Commercial Officer

Date JULY 30, 2020



Constance A. Reynolds
Notary Public
Anne Arundel County, Maryland
My Commission Expires
September 28, 2023



**UNANIMOUS WRITTEN CONSENT
OF THE DIRECTORS OF
SYNAGRO-WWT, INC.**

The undersigned, being the Directors of Synagro-WWT, Inc. a Maryland Corporation (the "Company"), for the purpose of taking action without meeting and waiving all notice requirements with respect thereto, hereby consents to, adopt and approve the following resolutions:

Resignation of Officers

RESOLVED, that the resignations of Michelle Hamann and Daniel Neary as Assistant Secretaries and Michael Schwartz and William Lucas as Vice Presidents of the Company are hereby accepted effective October 26, 2018.

Appointment of Officers

RESOLVED, that the following individuals be and hereby is approved, adopted and ratified as an officer of the Company until his respective successor shall have been duly appointed and qualified:

Michael Fegan
Matthew Robertson
Elizabeth Grant

Chief Operating Officer
Chief Commercial Officer
Assistant Secretary

Enabling Resolutions

FURTHER, RESOLVED, that the officers of the Company be, and they hereby are, authorized to take, or cause to be taken, any and all actions which they may deem necessary or desirable in connection with effectuating the above resolutions; and

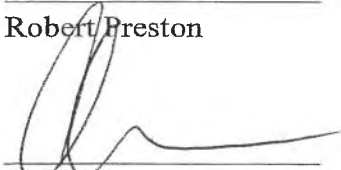
FURTHER, RESOLVED, that the actions of the officers of the Company previously taken in connection the above resolutions be, and they hereby are, in all respects authorized, ratified and confirmed as the acts and deeds of the Company.

FURTHER, RESOLVED, that the officers of the Company be, and hereby are, authorized to take, or cause to be taken any and all actions which they may deem necessary or desirable in connection with binding the Company.

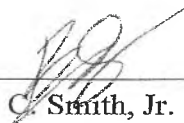
IN WITNESS WHEREOF, the undersigned Directors have executed this Unanimous Written Consent effective as of October 20, 2018.



Robert Preston



Alan Slepian



Benny C. Smith, Jr.

Gardner Utilities Department



REQUEST FOR PROPOSALS

Kill Creek Water Resource Recovery Facility Digester Cleanout

August 2020

Contact Information:
Scott Millholland Plant Superintendent
(913) 856-0986



TABLE OF CONTENTS

REQUEST FOR PROPOSALS

Kill Creek Water Resource Recovery Facility Digester Cleanout

INVITATION FOR BIDS

INSTRUCTIONS TO BIDDERS.....	1
TERMS & CONDITIONS.....	8
AGREEMENT.....	11
SCOPE OF WORK	22
MEASUREMENT AND PAYMENT.....	23
PROPOSER'S AFFIDAVIT.....	25
BID FORM.....	26
BIDDER'S QUALIFICATION.....	27
SUBCONTRACTOR'S QUALIFICATION.....	29
CERTIFICATE OF NONDISCRIMINATION.....	31
NONCOLLUSION AFFIDAVIT OF PRIME BIDDER.....	32
BOND FORMS	
BID BOND.....	33
PERFORMANCE BOND.....	34
STATUTORY PAYMENT BOND.....	36

CITY OF GARDNER

Invitation For Bids

Issue Date: August 12, 2020

Bid Deadline and Opening: August 28, 2020 at 11:00 AM (local time)
City of Gardner
Utilities Department
1150 E Santa Fe Street
Gardner, KS 66030

Contact: Scott Millholland, Plant Superintendent
Phone: (913) 856-0986
Email: smillholland@gardnerkansas.gov

Description: The City of Gardner is requesting bids for the Kill Creek WRRF Digester Cleanout project. The project includes, but is not limited to, the dewatering, cleaning, hauling and disposal of 2 digester waste products that include: sludge, debri, hair, and rags removal.

Copies of bid documents can be viewed or purchased for a non-refundable fee online at www.drexeltech.com in their eDistribution plan room, additional assistance is available at distribution@drexeltech.com. Information regarding this project can be found in the "Public Jobs" link on the website. Contractors desiring the Contract Documents for use in preparing bids may also obtain a set of such documents from Drexel Technologies; 10840 West 86th Street, Lenexa, KS 66214, 913-371-4430. Bidding documents will be shipped only if the requesting party assumes responsibility for all related charges. Corporate, certified, or cashier's checks shall be made payable to Drexel Technologies, Inc. Copies of the Request for Proposal documents can also be requested through the Utilities Department on file at the Utilities Department, 1150 E. Santa Fe Street, Gardner, KS, 66030.

Sealed bids are due prior to the Bid Deadline indicated above and must be marked "Bid for: **Kill Creek Digesters Cleanout Project WW1808**". Any bid received after the designated closing time will be returned to Bidder unopened.

No oral, telegraphic, facsimile or telephonic Bids or Bid alterations or corrections will be considered.

The City reserves the right to accept or reject any and all Bids and to waive any technicalities or irregularities therein. Bids may only be withdrawn or corrected pursuant to the provisions of K.S.A. 75-6902, as amended, et seq. Bids may be modified or withdrawn by written request of the Bidder if such requests are received in the office of the City Clerk, prior to the time and date for Bid opening.

INSTRUCTIONS TO BIDDERS

PROJECT WW1808

A. General Statement:

The Bidder shall submit all bids on the forms provided as part of these Bid Documents and in compliance with these Instructions. All appropriate blanks shall be filled-in and the appropriate individual on behalf of him/herself or the entity submitting the bid shall sign the Bid Proposal. Each bid must be enclosed in a sealed envelope plainly marked "Bid for: KILL CREEK DIGESTER CLEANOUT PROJECT". Pursuant to the Notice to Bidders, Bids shall be addressed to "City of Gardner, Kansas, Attention: "Scott Millholland".

B. Bidding Documents:

1. Bidding Documents and Plans may be obtained from:
Drexel Technologies
www.drexeltech.com
10840 W. 86th Street
Lenexa, KS 66214
2. Complete sets of Bidding Documents shall be used in preparing Bids. Bidding documents consist of the Bid, Contract, and any Plans or other supporting documentation.
3. Neither the City, nor any employee, nor any entity in contract with the City, assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.
4. The City, in making copies of the Bid Documents available on the above terms, does so only for the purpose of obtaining bids on the Work and does not confer a license or grant for any other use.
5. Bids shall include furnishing all labor, materials, equipment and performing the Work for the project in strict accordance with the Bidding Documents and any Addenda.

C. Inquiries:

Inquiries regarding the project should be directed to:
Scott Millholland, Plant Superintendent
913.856.0986
smilholland@gardnerkansas.gov

The City's representative for the duration of this project is:

Scott Millholland
1150 E. Santa Fe St.
Gardner, KS 66030
913.856.0986
smilholland@gardnerkansas.gov

D. Project Timeline:

The following dates are provided in addition to those previously stated to help interested Bidders in planning participation in the project herein. The dates listed, however, are in no way guaranteed and are subject to change without notice.

Bid Issue Date	August 12, 2020
Bid Opening	August 28, 2020, 11:00 a.m.
City Council Meeting	September 14, 2020

E. Bidders Representation:

In order to induce the City to accept their Bid, in addition to and not in lieu of any other representations and warranties contained in the Bidding Documents, the Bidder represents and warrants the following to the City:

1. The Bidder and their subcontractors are financially solvent and possess sufficient working capital to complete the Work and perform all obligations hereunder;
2. The Bidder is able to provide the tools, materials, supplies, equipment, and labor required to complete the Work and perform the Bidder's obligations hereunder;
3. The Bidder is now and will continue to be authorized to do business in the State of Kansas, and is now and will continue to be properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Bidder and over the Work and the Project;
4. The Bid and execution of the Bidding Documents and the Bidder's performance thereunder are within the Bidder's duly authorized powers;
5. The Bidder has made an exhaustive study of the Bidding Documents; understands the terms and provisions thereof; has sought or will timely seek any and all necessary clarifications prior to submitting the Bid and that the Bid is made in accordance with the foregoing;
6. The Bidder has visited the project site and is completely familiar with any local and special conditions under which the Work is to be performed and has correlated such knowledge with the requirements of the Bidding Documents;
7. The Bid is based upon the materials, systems, and equipment described in the Bidding Documents without exception;
8. The Bidder certifies that his bid is submitted without collusion, fraud, or misrepresentation as to other Bidders, so that all bids for the project result from a free, open and competitive bidding environment;
9. The Bidder possess a high level of experience and expertise in the business administration, management, and superintendence of projects of the size, complexity, and nature of this particular project, and that the Bidder will perform the Work with care, skill and diligence of such a Contractor;
10. The Bidder acknowledges that the City is relying upon this Bidder's skill and experience in connection with the Work being bid herein;
11. That complete sets of Bidding Documents were used in preparing the bid and that the City is not responsible for errors or misinterpretations resulting from the use of incomplete sets of such documents.

F. General Instructions:

1. The foregoing warranties are in addition to, and not in lieu of (A) any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance of the Work and, (B) any and all other warranties, representations and certifications made in the Bidding Documents. The Contractor's liability hereunder shall survive the City's final acceptance of and payment for the Work. All representations and warranties set forth herein and in the Contract Documents shall survive the final completion of the Work or the earlier termination of this Agreement.
2. Any or all Bidders may be required by the City to furnish information to support the Bidder's capability to fulfill the Contract if awarded the Contract. Such information does not need to be submitted with the Bid, but may be requested at the City's option. Such information may include, but not be limited to, the following:
 - i. Proof of registration with the Kansas Director of Taxation (K.S.A. 79-1009).
 - ii. Proof of registration with the Kansas Secretary of State.
 - iii. List of projects of similar size and type the Bidder has constructed or in which the Bidder has been engaged in a responsible capacity.
 - iv. Evidence the Bidder maintains a permanent place of business.
 - v. A current financial statement.
3. Examination: Before submitting a Bid, each Bidder shall examine carefully all documents pertaining to the work and visit the site to fully inform himself of the condition of the site and the conditions and limitations under which the work is to be performed.
4. Submission of a Bid will be considered presumptive evidence that the Bidder has fully informed himself of the conditions of the site, requirements of the Contract Documents, and of pertinent national, state and local codes and ordinances, and that the Bid made allowances for all conditions, requirements and contingencies.
5. Bidder requiring clarification or interpretation of the Bidding Documents shall make such requests (in writing only) of the Project Manager at least ten (10) days before the date for receipt of bids.

G. Addenda:

1. Any interpretations, corrections or changes to the Bidding Documents will be made by Addenda.
2. Written Addenda will be distributed online through www.drexeltech.com to all plan holders registered with Drexel Technologies.
3. Copies of written Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.
4. Addenda will be issued no later than four days prior to the date for receipt of Bids, except an addendum withdrawing the request for Bid Proposals, or one, which includes postponement of the date for receipt of Bid Proposals.
5. Each Bidder shall ascertain prior to submitting his Bid that he has received all written addenda issued, and he/she shall acknowledge its receipt in his Bid.

H. Substitutions:

1. Each Bidder represents that his bid is based upon materials and equipment described in the bidding documents.
2. No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the City at least seven (7) days prior to the date of the Bid opening.
3. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation.
4. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included.
5. The burden of proof of the merit of the proposed substitute is upon the proposer.
6. The City's decision of approval or disapproval of a proposed substitution shall be final.
7. If the City approves any proposed substitution, such approval will be set forth in a written addendum. Bidders shall not rely upon approvals made in any other manner.
8. No substitution will be considered after the Contract award unless specifically provided in the Contract Documents.

I. Preparation of Bids:

1. Bids shall be made upon the form provided in these Bidding Documents.
2. All blanks must be filled in with ink or type. Blanks left on the Bid form may cause a bidder to be disqualified. The completed form shall be without alteration or erasure.
3. If a bid on all alternates is not required for alternate items, a written indication of "no Bid" on the Bid form is required.
4. Amounts shall be expressed in both words and figure, and in case of discrepancy between the two, the amount in words shall govern.
5. Sign Bid form in longhand, with name typed below signature. Where Bidder is a Corporation, Bids must be signed with the legal name of the Corporation, followed by the legal signature of an officer authorized to bind the Corporation to a contract.

J. Submission:

All copies of the (1) Bid and (2) Bid Security and other documents required to be submitted with the Bid shall be enclosed in a sealed envelope with the notation "Bid Enclosed" on the face thereof and plainly marked "Bid for: KILL CREEK DIGESTER CLEANOUT PROJECT Number WW1808". Pursuant to the Notice to Bidders, Bids shall be addressed to "City of Gardner, Kansas, Attention: "Scott Millholland". **Provide one (1) original and one (1) copy.** Bid packages should be submitted/delivered to: Utilities Department, City of Gardner, 1150 E. Santa Fe St., Gardner, KS, 66030.

K. Modification and Withdrawal:

Bids may only be withdrawn or corrected pursuant to the provisions of K.S.A. 75-6901, as amended, et seq.

L. Consideration of Bids/Selection Process:

1. The City reserves the right to reject any and all Bids; to waive any and all technicalities, irregularities and formalities; to negotiate contract terms with the successful Bidder; and the right to disregard all non-conforming, non-responsive or conditional Bids.
2. In evaluating Bids and determining the lowest responsible Bidder, City shall consider qualifications of the Bidders.
3. Each Bidder shall submit on a form provided for that purpose, a Statement of Bidder's Qualifications, when required by the City.
4. The City may consider the qualification and experience of Bidders and subcontractors and other persons and organizations, including suppliers, proposed to be involved in the project. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the City.
5. The City may conduct any such investigation it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed subcontractors and other persons, organizations and suppliers, to do Work in accordance with the contract documents to the City's satisfaction within the prescribed time.

M. State of Kansas Preference

1. State law, K.S.A. 75-3740a, requires that, to the extent permitted by federal law and regulations when letting contracts for Bids, the City must require any Bidder domiciled outside the state of Kansas to submit a Bid the same percent less than the lowest Bid submitted by a responsible Kansas Bidder as would be required of such Kansas domiciled Bidder to succeed over the Bidder domiciled outside Kansas on a like contract let in the foreign Bidder's domiciliary state.
2. All Bidders domiciled outside of the State of Kansas shall furnish City with a copy of their state's preferential Bidding statutes and the applicable percent received by in-state Bidders from the state in which the contract is located.

N. Subcontractors

1. The Contractor shall not award subcontracts, which total more than forty-five percent (45%) of the contract and shall perform, within its organization, work amounting to not less than fifty-five percent (55%) of the total contract price.
2. The Contractor shall submit the names of subcontractors for approval by the City prior to award of the contract.

O. Award of Contract:

1. The contract will be awarded to the lowest responsive, responsible Bidder as determined by the City and shall be required to enter into a contract with the City.
2. If the contract is awarded, the City will give the successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

P. Notice To Proceed:

1. No work shall commence until the City issues a Notice To Proceed, and a Notice To Proceed will not be issued until all of the following are delivered to the City:
 - i. The Contract signed by the representative with authority and ability to do so.
 - ii. Bonds with the attached powers of attorney.
 - iii. Certificate of Insurance listing the City as Additional Insured.
 - iv. Certificate of Nondiscrimination.
 - v. List of subcontractors and suppliers.
 - vi. Corporate Resolution of authority to sign and deliver the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary and dated prior to all other submittals.
 - vii. Domestic (Kansas) corporations shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State.
 - viii. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State.
 - ix. Construction schedule with major milestones.
2. Such documents must be delivered with ten (10) days of the City's written notification to the successful Bidder. If they are not delivered within such time then the Bidder will be deemed to have abandoned its contract with the City, and the City will award a contract to the next lowest and best Bid.
3. The successful Bidder shall not make claim either for time or money against the City for labor or materials performed or delivered prior to issuance of the Notice to Proceed.
4. The City's responsibility to issue a Notice to Proceed is expressly conditioned on the Contractor's timely execution and delivery prior to issuance of the Notice to Proceed.

Q. Payment by City:

1. Payments by the City may be made using any of the following methods of payment, in its sole discretion:
 - i. ACH or wire transfer
 - ii. Check – checks will be mailed to the Contractor's place of business
 - iii. Credit/Purchasing Card for payments under \$1,000
2. The successful bidder will be required to submit financial information as required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by federal law.

R. Project Completion:

Upon satisfactory completion of the Contract, a formal Certificate of Completion will be forwarded to the Contractor by the City. The date of substantial completion of the Project will be the starting date of the guarantee period.

S. Indemnity/Hold Harmless Agreement:

The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Gardner and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

T. Open Record:

Sealed bids received by the City pursuant to this solicitation will be temporarily exempt from disclosure in accordance with the Kansas Open Records Act. Thereafter, bids will be open for inspection by any person pursuant to the Kansas Open Records Act.

U. Taxes:

The City of Gardner, as an agency of the State of Kansas, is exempt from paying Kansas sales or use tax per K.S.A. 79-3606 (b), as well as contractors hired by the City who purchase tangible personal property for the use in constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the City. The successful bidder shall be required to comply with K.S.A. 79-3606, as amended. The City's tax-exempt status is valid only when items purchased outside the State are delivered within the State of Kansas.

V. All Work:

Shall be in accordance with all Federal and State Laws, Local Ordinances and Building Codes, and the Americans with Disabilities Act, as amended.

TERMS & CONDITIONS

A. Bid Guarantee:

1. Bid Security is required in the amount of at least (5%) of the Bid plus all add Alternates. Bid Security can be in the form of certified or Cashier's Check or Bid Bond acceptable to the City of Gardner, Kansas. Checks are to be made payable to the City of Gardner, Kansas and drawn on a solvent Kansas bank or trust company.
2. Bid Bonds shall be written by a bonding agency approved by the United States Treasury Department and licensed to do business in the State of Kansas.
3. The amount of said Bid Security may be retained by and forfeited to the City of Gardner, Kansas as liquidated damages, if such proposal is accepted, the Contract awarded, and the Bidder fails to enter into a Contract in the form prescribed, with the required bonds, within ten (10) days after such award is made by the City of Gardner, Kansas.
4. The City of Gardner, Kansas reserves the right to retain the Bid Security of the three (3) lowest Bidders until the successful Bidder has entered into an agreement or until sixty (60) days after Bid opening, whichever is the shorter period. All other Bid Securities will be returned as soon as possible.

B. Bonds:

1. Performance Bond, Maintenance Bond and Statutory Payment Bond shall be furnished to the City, by the Contractor, for all contracts over \$100,000, in an amount equal to 100 percent of the Contract sum.
2. The Statutory Payment Bond shall be filed in the office of the District Court of Johnson County. Contractor shall provide the City with a certified copy of said statutory bond as so filed.
3. Bonds furnished shall be written by a surety approved by the U.S. Treasury Department and licensed to do business in the State of Kansas. No work shall commence until bonds are in force.
4. Power of Attorney for the surety company agent must accompany each bond issued, and must be certified to include the date of the bonds.
5. Cost of the bond shall be included in the bid and paid for by the Contractor.

C. Insurance:

Any bidder receiving an award shall be required to provide proof of this insurance, in the form of a Certificate of Insurance, listing the City of Gardner as an additional insured. The following insurance(s) shall be required:

- ☐ Workers' Compensation and Employer's Liability – Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any

reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.

- ☐ Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
- ☐ Additional Insurance - The Contractor shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.
- ☐ Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions

D. Taxes:

It is the intent of the City to supply the Contractor with a Sales and Compensating Tax Exemption Certificate for use in purchasing materials and supplies used on qualifying projects. Qualifying projects will be identified in the Notice to Bid.

1. Contractor shall, in preparing his proposal, omit from his computed costs all sales and service taxes for qualifying projects.
2. The Contractor will be furnished a copy of the Project Completion Certification.
3. All invoices must be retained by the Contractor for a period of five (5) years and are subject to audit by the Kansas Department of Revenue.
4. Final payment may be held by the City until the City has received the two Project Completion Certifications from the Contractor along with a Consent.

E. Term of Contract:

This contract shall commence the day after date of award by the City unless otherwise stipulated in the Notice of Award Letter. The contract shall remain in effect as reflected on the Bid Form.

F. Completion Time:

The Contractor will not be allowed to work on site until **September 21, 2020**.

Substantial completion shall be achieved **45 calendar days** from Notice of Award to

allow time for the prefabricated bridge to be fabricated and delivered. Final completion shall be achieved **10 calendar days** thereafter.

AGREEMENT BETWEEN CITY AND CONTRACTOR

This agreement ["Agreement"], is made as of this _____ day of _____, 20__ by and between the City of Gardner, Kansas, [hereinafter "City"], and _____, [hereinafter referred to as "Contractor"] for the construction of the following described work: **Kill Creek Digester Cleanout** known as City of Gardner Project No. **WW1808**.

RECITALS

WHEREAS, the City desires to construct and complete Project No. WW1808.

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the Work of Contractor for **Kill Creek Digester Cleanout**.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1.0 Term of Agreement.

The term of this Agreement shall be until the completion of the project and issuance of a Certificate of Final Completion unless a different term is specified within Exhibit A or unless terminated earlier in accordance with the provisions of Article 2 below. In the event that the Work rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the Governing Body of the City in the establishment of its annual budget.

2.0 Termination.

2.1 City reserves the right to terminate this Agreement for cause or for convenience and without cause or default by providing ten (10) days written notice of such termination to Contractor. Upon receipt of such notice from City, Contractor shall, at City's option as contained in the notice: (1) immediately cease all work; or (2) meet with the City's Project Representative and, subject to City's approval, determine what work shall be required of Contractor in order to bring the project to a reasonable termination in accordance with the request of the City. If the City terminates this Agreement for convenience and without cause, the City shall compensate Contractor for all work completed to date of its receipt of the termination notice and for any additional work the parties might agree is reasonably necessary to bring the project to a reasonable termination point. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. If the City shall terminate for cause or default on the part of Contractor, City shall compensate Contractor for the reasonable cost of its work completed to date of receipt of its termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The

City also retains its rights and remedies against Contractor including but not limited to its rights to sue for damages, interest and attorney fees.

- 2.2 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Administrator or Department Director, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

3.0 Work to be Performed.

- 3.1 Contractor's Work. The Work to be performed by Contractor under this Agreement is as described in the Bid Documents, attached and incorporated by reference.

- 3.2 Performance Standard. Contractor represents to City that Contractor is professionally qualified to do this Project and if required, is licensed to practice the Work being offered by all public entities having jurisdiction over Contractor and the Project.

- 3.3 Assigned Personnel.

- 3.3.1 Contractor shall only assign competent personnel to perform work hereunder. In the event that at any time City, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from City.

- 3.3.2 With respect to this Agreement, the Contractor shall employ the following key personnel: _____

- 3.3.3 In the event that any of Contractor's personnel assigned to perform Work under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor's shall be responsible for timely provision of adequately qualified replacements.

- 3.3.4 The Contractor shall designate _____ as Principal (name/contact info) on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Contractor. So long as the individual named above remains actively employed or retained by Contractor, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Contractor will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.

- 3.3.5 City shall designate **Scott Millholland, (913) 856-0986** as the Project Representative to represent the City in coordinating this project with Contractor, with authority to transmit instructions and define policies and decisions of City. The written consent of the Department Director, and if applicable, City Administrator and/or Governing Body, shall be required to approve any increase in Project cost as defined in Exhibit B.

4.0 Time of Performance.

Unless otherwise provide in this Agreement, Contractor shall commence Work upon the Project within 14 days after execution of this Agreement and shall complete such work within 45 calendar days. Time is of the essence.

5.0 Payment.

5.1 City agrees to pay Contractor for the actual work performed on the Project at the rates set forth in the Bid Form, Exhibit B, which is attached hereto and incorporated by reference into this Agreement, the total of which shall not exceed a maximum total fee of _____.

5.2 Contractor shall bill City monthly for all work performed. The bill submitted by Contractor shall itemize the work for which payment is requested. City agrees to pay Contractor within thirty (30) days of approval. Contractor agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law.

5.3 All invoices should be sent to **Scott Millholland**, smillholland@gardnerkansas.gov.

6.0 Cash Basis and Budget Laws.

The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

7.0 Indemnification.

To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Contractor or any permitted subcontractors hired by Contractor, the Contractor agrees to indemnify and hold harmless City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Contractor or its subcontractors. Contractor shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim.

8.0 Insurance.

8.1 The Contractor shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following insurance coverages as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

- ☐ Workers' Compensation and Employer's Liability - Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
 - ☐ Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
 - ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
 - ☐ Professional Liability - The Contractor shall maintain Professional Liability insurance in an amount not less than \$500,000, and shall provide the City with certification thereof.
 - ☐ Additional Insurance - The Contractor shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.
 - ☐ Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions
- 8.2 The City shall be named additional insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 8.3 Industry Ratings - The City will only accept coverage from an insurance carrier who offers proof that it:
- 1) Is licensed to do business in the State of Kansas;
 - 2) Carries a Best's policyholder rating of A or better;
- AND
- 3) Carries at least a Class X financial rating.
- OR

Is a company mutually agreed upon by the City and Consultant.

8.4 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.

8.5 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

9.0 Conflict of Interest.

Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its Work hereunder, including under 31 U.S.C.S. Section 1352. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed.

10.0 Nondiscrimination.

Contractor must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans with Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

11.0 Facilities and Equipment.

Contractor shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement.

12.0 Accessibility.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

13.0 Records, Ownership and Inspection.

13.1 Ownership of Documents.

All documents prepared by Contractor in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.

13.2 Open Records.

In recognition of the City's obligations under the Kansas Open Records Act ("KORA"), Contractor acknowledges that this Agreement along with any reports and/or records provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.

13.3 Maintenance of Records.

Except as otherwise authorized by the City, Contractor shall retain such documentation for a period of three (3) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

14.0 Independent Contractor.

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker's compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employee's compensation.

15.0 Compliance with Laws.

15.1 The Contractor shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.

15.2 Pursuant to K.S.A. 16-113, if the Contractor does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Contractor shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of the Contract.

16.0 Assignment.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be

of any force or effect whatsoever unless and until the other party shall have so consented. The subcontracting, assignment, delegation or transfer of the Work shall in no way relieve the Contractor of its primary responsibility for the quality and performance of such Work.

17.0 Confidentiality.

All reports and documents prepared by Contractor in connection with the performance of this Agreement are confidential until released by City to the public. Contractor shall not make any such documents or information available to any individual or organization not employed by Contractor or City without the written consent of City before any such release.

18.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To City: Scott Millholland, Plant Superintendent

Phone: (913) 856-0986

Email: smillholland@gardnerkansas.gov

To Contractor:

19.0 Amendments.

19.1 This document represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

19.2 This document may be amended only by written instrument, signed by both City and Contractor.

20.0 No Third Party Beneficiaries.

City and Contractor specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

21.0 Force Majeure.

City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

22.0 Titles.

The titles in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

23.0 Negotiations.

City and Contractor agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

24.0 Costs and Attorney Fees.

If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

25.0 Severability.

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.0 Authority to Enter into Agreement.

Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

27.0 Incorporation of Appendices.

Exhibit A - City BID #_____, Addendum No. 1 to BID #_____, and Exhibit B - Contractor's Response to BID #_____ are attached hereto and made a part hereof as if fully set out herein.

28.0 Entire Agreement.

This Agreement represents the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

29.0 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 20__.

CITY OF GARDNER, KANSAS

CONTRACTOR

(Mayor/City Administrator)

Its Authorized Agent (*Insert Name, Title*)

ATTEST:

City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney

EXHIBIT A - BID # _____

EXHIBIT B - CONTRACTOR'S RESPONSE TO BID #_____

**Kill Creek Treatment Plant
Digester Cleaning
Scope of Work**

- **General Description:** The City of Gardner, KS is seeking qualified contractors to perform a cleaning of 2 digesters located at their Kill Creek Waste Water Plant. The digester will have sludge, debris, hair and rags that have accumulated over the last fifteen years. This material is to be dewatered and hauled to a licensed solid waste landfill for disposal. Facility contact is Scott Millholland, e-mail, smillholland@gardnerkansas.gov

1. Services Provided by Owner

- Sludge will be drawn down by the owner and then turned over to the contractor.
- Equipment resources to be provided by WRRF, non- potable water, electricity, and a filtrate discharge location for the belt filter press operation or other removal process.
- There will be a 2-week break between the tanks to allow the plant to draw down the second tank.

2. Services Provided by Contractor

- Remove remaining solids from the digester and dewater using a belt filter press or other means.
- Disposal of the material
- Hose down the inside of digesters and clean for inspection.
- Bottom of floor needs to be visible and inspected.
- All miscellaneous tools and equipment including, but not limited to, ladders, ventilation equipment, lights, confined entry safety equipment, etc. will be the responsibility of the contractor.

Safety

- Contractor must comply with all safety requirements as noted by the City of Gardner

MEASUREMENT AND PAYMENT

MP-1 GENERAL

- A. It is the intention of this section of the specifications to set forth the method of measurement and payment for that part of the work on the Contract Documents that will be directly paid for at the price bid per unit of measure.
- B. All the work to be performed under this contract will be paid for at the lump sum or unit prices stated in the proposal of the accepted BIDDER. Unit price payments will be based upon the measurement of installed items and lump sum shall constitute full compensation for all labor, materials, tools, equipment and incidentals required to complete the work, as described in accordance with the Contract Documents. Any material, equipment or operation not specifically mentioned, however, required for proper completion of the work shall be considered to be incidental to the unit price pay item to which it pertains.
- C. Quantities listed in the bid form are estimated and are not guaranteed. Estimated quantities indicated only for convenience in comparing bids. Payment will be made for actual quantities constructed or installed, be they more or less than those listed unless otherwise indicated; said quantities being measured and determined as follows.
- D. No adjustments shall be made to unit prices listed on the bid form, for the measured and determined actual quantities constructed or installed, be they more or less than the estimated quantity.
- E. The CONTRACTOR shall provide temporary walks, fencing, barricades or other protective measures as necessary to ensure the safety of the public traversing the construction site. Equipment storage areas and material stockpiles shall be located on sites provided by the CONTRACTOR with due regard to location, appearance, and hazard potential to the traveling public.
- F. Temporary construction entrance, temporary surfacing or any interim construction necessary shall be maintained by the CONTRACTOR at all times and shall be constructed of a material approved by the City Engineer. This work shall be subsidiary to other bid items.

MP-2 MOBILIZATION

- A. "Mobilization" shall be measured as a lump sum and shall include contractor profit and overhead, mobilization, access to site, installation and maintenance of construction entrance, utility coordination and misc. appurtenant items necessary for the construction of the improvements.
- B. Payment shall be made at the contract lump sum price bid as shown in the proposal for "Mobilization". Payment shall be full compensation for

MEASUREMENT AND PAYMENT

furnishing all materials, labor, equipment, tools, supplies, traffic control, mobilization and incidental related items necessary for mobilization.

MP-3 DIGESTER CLEANING & EQUIPMENT

- A. "DIGESTER CLEANING & EQUIPMENT" shall be measured as a lump sum for the project includes, but is not limited to, the dewatering, cleaning, hauling and disposal of 2 digesters waste products that include, sludge, debri, hair, and rags removal.
- B. Payment shall be made at the contract lump sum price bid as shown in the proposal. Payment shall be full compensation for furnishing all labor, equipment, proper disposal, all appurtenant work and delivery of existing blowers to Owner's designated location as described in the Contract Documents.

MP-4 FORCE ACCOUNT

- A. The Force Account Item shall be used, at the discretion of the City Project Manager, as a contingency for any unexpected issues.
- B. Payment for work under this item shall be paid for on an extra work basis not to exceed the contract set price for "Force Account." Before the extra work is performed, the Contractor shall submit his proposed price for approval by the Project Manager, and shall have received the written approval of the City Project Manager for the proposed extra work.

PROPOSER'S AFFIDAVIT

PROJECT # WW1808

This completed Proposer's Affidavit form must be submitted with the Proposer's Bid and will become a part of any agreement that may be awarded. This Proposer's Affidavit must be signed by an authorized representative. If the Proposal Signature Form is not signed by an authorized representative or submitted with the proposal, the proposal is considered non-responsive.

Please type or print:

Legal Name of Person, Firm or Corporation: Synagro Central, LLC

Address: 435 Williams Court, Suite 100

City/State/Zip: Baltimore, MD 2122-

Contact Person: Ericka Day

Phone: 772-971-6286 Email: Eday@synagro.com

Federal ID #: 76-0612568

Type of Organization: ☐ Individual ☐ Small Business ☐ Non-profit
☐ Partnership ☒ Corporation ☐ Joint Venture

Attach copies of all such licenses, permits or certificates issued to the business entity.

The undersigned person by his/her signature affixed hereon warrants that:

- A. He/she is an officer of the organization.
- B. He/she has been specifically authorized to offer a bid in full compliance with all requirements, and conditions, as set for in this Invitation for Bid.
- C. The Proposer complies with all of the requirements of the Bid.
- D. The Proposer certifies all products and services in the bid meet or exceed all requirements of this specification as set forth in the Bid and that all exceptions are clearly identified.
- E. He/she received the following addenda to the Invitation to Bid (indicate number and date of each):

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Authorized Signature: [Signature] Sales Support Manager Date: 8/26/20
(Title)

Subscribed and sworn to before me this 26th day of August, 2020 by Constance A. Reynolds

[Signature]
(Signature of Notary Public)

(seal, if any)

My commission expires: Sept. 28, 2023

Constance A. Reynolds
Notary Public
Anne Arundel County, Maryland
My Commission Expires
September 28, 2023



BID FORM

PROJECT #WW1808

All Bid Pricing is to be in accordance with all General Conditions, Special Conditions, and Minimum Specifications as stated within this Request for Bid. Failure to complete the following form(s) shall result in your Bid being deemed non-responsive and rejected without any further evaluation.

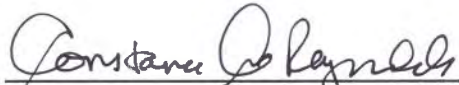
Bid Tabulation -					
No.	Item	Qty.	Unit	Unit Price	Cost
1	Mobilization	1	LS	\$20,430.27	\$20,430.27
2	Digester & Equipment	1	LS	\$98,500.00	\$98,500.00
4	Force Account	1	LS	\$5,000.00	\$5,000.00
				Subtotal:	\$123,930.27

TOTAL BID (KILL CREEK Digester Cleaning)

Authorized Signature:  Date: 8/26/20

Name and Title: Emil Kneis, Sales Support Manager

Subscribed and sworn to before me this 26th day of August, 2020 by Constance A. Reynolds


(Signature of Notary Public)

(seal, if any)

Constance A. Reynolds
Notary Public
Anne Arundel County, Maryland
My Commission Expires
September 28, 2023

My commission expires: Sept 28, 2023



BIDDER'S QUALIFICATION STATEMENT

PROJECT # WW1808

1. The name, address, telephone number/fax number/email address of the bidder.

Name: Synagro Central, LLC

Address: 435 Williams Court, Suite 2100 Baltimore MD 21220

Phone/Fax/Email: P: 772-971-6286 F: 443-489-9042 E: eday@synagro.com

2. Years in business 21 Years

3. List of contractors owned equipment available for this project. Attach as separate submittal, if necessary.

Equipment List Attached.

4. List of equivalent type projects within the last four (4) years. Attach as separate submittal, if necessary.

i. Name of Client: Blue Lake - St. Paul Date of Project: 8/25/2020

Contact Person: John Tierney Phone: 651-247-2076

Description of Project: Digester cleaning; pumping, dewatering, and hauling of 1.4 MG anaerobic digester

ii. Name of Client: Kansas City, MO Date of Project: 2019

Contact Person: Brent Herring, Director Phone: 816-492-0111 ext 7300

Description of Project: Lime stabilize, haul and land apply Biosolids

iii. Name of Client: Village of Bloomingdale, IL Date of Project: 2019

Contact Person: Garett Guthrie Phone: 631-461-0639

Description of Project: Mobile dewatering, land app, and digester cleanings.

5. List of person(s) who will supervise and be available to perform the work on this project and the number of years' experience.

Role:	Names:	Years of Experience:
Project Manager:	Will Walker	30 years
Superintendent:	Ryan Rogers	9 years
Foreman:		
Other Personnel:		
Operations Manager	Patrick Lappe	25 years
	Ericka Day	5 Years

6. List of Proposed Major Subcontractors:

Each bidder shall enter in the space provided the name(s) of major subcontractors the bidder proposes to employ and the type of work the subcontractor will perform. A major subcontractor is defined as a subcontractor whose subcontract constitutes approximately five (5) percent or more of the total contract price.

Subcontractor	Address	Phone #	Type/Scope of Work
Cutting Edge Trucking	P.O. Box 597 Louisburg, KS 66053	913-837-2249	Hauling of sludge, Biosolids

7. Such additional information as will assist the City in determining whether the bidder is adequately prepared to fulfill the contract. Attach a separate submittal, if necessary.

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of bidder's qualifications.

Authorized Signature: [Signature] Sales Support Manager Date: 8/26/20
(Title)

Subscribed and sworn to before me this 26th day of August, 2020 by
Constance A. Reynolds.

[Signature]
(Signature of Notary Public)

(seal, if any)

Constance A. Reynolds
Notary Public
Anne Arundel County, Maryland
My Commission Expires
September 28, 2023

My commission expires: Sep 1 - 28, 2023



SUBCONTRACTOR'S QUALIFICATION STATEMENT

PROJECT # WW1808

Please fill out a form for each subcontractor the contractor proposes to employ. Copy this form if additional forms are required and attach as separate submittals to the Proposal.

1. The name, address, telephone number/fax number/email address of the Subcontractor.

Name: Cutting Edge Trucking Inc

Address: PO Box 597 Louisburg, Ks 66053

Phone/Fax/Email: 913-837-2249 dpeuser@cuttingedgetrucking.com

2. Years in business 26

3. List of Subcontractors owned equipment available for this project. Attach as separate submittal, if necessary.

Trucks End Dumps Dump Trucks

4. List of equivalent type projects within the last four (4) years. Attach as separate submittal, if necessary.

i. Name of Client: SYNAGRO Date of Project: 11/2019

Contact Person: PAT Lappe Phone: 816-882-3174

Description of Project: HAUL sludge - biosolids

ii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

iii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

5. List of person(s) who will supervise and be available to perform the work on this project and the number of years' experience.

Role:	Names:	Years of experience:
Project Manager	Doug Petersen	25
Superintendent	" "	11
Foreman:	Clint Graham	20
Other Personnel:	Bart Lillich	10

6. Such additional information as will assist the City in determining whether the bidder is adequately prepared to fulfill the contract. Attach a separate submittal, if necessary.

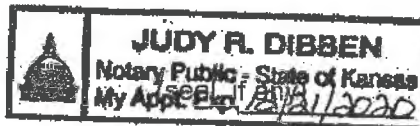
The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of subcontractor's qualifications.

Authorized Signature: Doug Petersen Pres. Date: 8-24-20
(Title)

Subscribed and sworn to before me this 24th day of August, 2020 by

Doug Petersen

Judy R. Dibben
(Signature of Notary Public)



My commission expires: 12/31/2020



**CERTIFICATE OF NONDISCRIMINATION
MANDATORY PROVISIONS**

PROJECT # WW1808

K.S.A. § 44-1030(a) provides that every contract for or on behalf of the City of Gardner, Kansas for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees to the following:

- (1) that the contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, age, national origin or ancestry;
- (2) that in all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer," or similar phrase as approved by the state commission;
- (3) that if the contractor fails to comply with the manner in which the contractor reports to the state commission in accordance with the provision of K.S.A. § 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner;
- (4) that if the contractor is found guilty of a violation of the Kansas Act Against Discrimination under decision or order of the state commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner; and
- (5) that the contractor shall include the provisions of K.S.A. § 44-1030(a) subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of K.S.A. § 44-1030(a) shall not apply to a contract entered into by a contractor: (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the City of Gardner cumulatively totals \$5,000 or less during the same fiscal year.

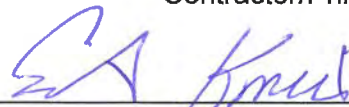
By signing this Certificate of Nondiscrimination, contractor acknowledges inclusion of the requirements of K.S.A. 44-1030(a) in the base contract and in all subcontracts.

DATE: 8/26/20

Synagro Central, LLC

Contractor/Principal

By:


Signature

CORPORATE SEAL

Sales Support Manager

(Official Title of Signer)



NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

PROJECT # WW1808

STATE OF Maryland)
COUNTY OF Baltimore)

Emil Kneis, being first duly sworn deposes and says that:

- (1) He is Sales Support Manager of Synagro Central LLC., the Bidder that has submitted the attached Bid;
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees of parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Gardner, KS or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: 

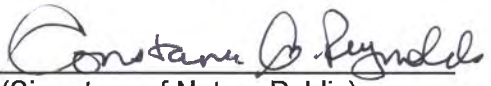
Name: Emil Kneis

Title: Sales Support Manager

Bidder: Synagro Central, LLC

Subscribed and sworn to before me this 26th day of August, 2020 by

Constance A. Reynolds


(Signature of Notary Public)

(seal, if any)

Constance A. Reynolds
Notary Public
Anne Arundel County, Maryland
My Commission Expires
September 28, 2023

My commission expires: Sept. 28, 2023



BID BOND

PROJECT # WW1808

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____ a corporation duly organized under the laws of the State of _____ as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Gardner Kansas, as Obligee, hereinafter called the Obligee, in the sum of _____ Dollars (\$ _____), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the following project:

PROJECT: KILL CREEK DIGESTER CLEANOUT

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this/her obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this/her _____ day of _____, 20__.

[SEAL]

[Contractor/Principal]

[Title]

ATTEST:

[Secretary]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]



PERFORMANCE BOND

PROJECT WW1808

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned of _____, as Principal, hereinafter referred to as the "Contractor," and _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, hereinafter referred to as the "Surety," are held and firmly bound unto the CITY OF GARDNER, KANSAS hereinafter referred to as "City," in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum, well and truly to be made to the City of Gardner, Kansas, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the _____ day of _____, 2020, executed a written Agreement with the City for furnishing in a good, substantial and workmanlike manner all construction labor, materials, equipment, tools, transportation, superintendence, and other facilities and accessories, for and in connection with the satisfactory and timely performance of all Work and construction of certain improvements referred to as **KILL CREEK DIGESTER CLEANING**, more particularly designated, defined and described in the Agreement and the Contract Documents, and in accordance with the Specifications and Plans and other Contract Documents thereto; a copy of said Agreement is attached hereto and made a part hereof.

NOW THEREFORE, if said Contractor shall and will, in all particulars promptly and faithfully perform and abide by each and every covenant, condition, and part of said Agreement, and the Conditions, Specifications, Plans and other Contract Documents hereto attached or by reference made a part hereof, according to the true intent and meaning in each case, and said improvements shall be constructed and completed in strict accordance with the Contract Documents, conditions, specifications, plans and other documents, and if said Contractor shall replace all defective parts, material and workmanship for a period of two (2) years after acceptance by the City, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

PROVIDED, if said Contractor fails in any particulars to duly and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Agreement and the Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to replace all defective parts, material and workmanship for a period of two (2) years after acceptance by the City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts for the period of two (2) years after acceptance, and any other damages incurred by the owner in procuring completion and/or repair, such amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation; liability and otherwise, or any other supplies or materials used or consumed by

such Contractor or his, their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or the Work to be performed hereunder, or the Specifications, plans or other documents accompanying the same, shall in any way affect its obligations on this Performance Bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or to the Work, or to the Specifications, plans and other documents.

PROVIDED FURTHER, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than fifty percent (50%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "amendment," wherever used in this bond, and whether referring to this bond or the Agreement, shall include any alteration, addition, extension, or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his/her hand, and the said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this, the _____ day of _____, 2020.

[SEAL]

[Contractor/Principal]

[Title]

[SEAL]

[Surety Company]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.



STATUTORY PAYMENT BOND

PROJECT WW1808

KNOW ALL MEN BY THESE PRESENTS:

THAT we, the undersigned, _____ of _____, hereinafter referred to as "Contractor", and _____ a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the State of Kansas, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, or heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded CONTRACTOR has, on the _____ day of _____, 2020, entered into an Agreement with the City of Gardner, Kansas, for furnishing all tools, equipment, materials and supplies, performing all labor and constructing **Project: KILL CREEK DIGESTER CLEANING**, described in the attached Agreement, Contract Documents, Specifications, Plans, and other documents on file in the office of the City Clerk of Gardner, Kansas.

NOW, THEREFORE, if the CONTRACTOR and his SUBCONTRACTORS shall pay all indebtedness incurred for supplies, materials, or labor furnished, used or consumed in connection with, or in, or about the construction or making of, public improvements, including gasoline, lubricating oils, fuel oils, greases, coal, and similar items used or consumed directly in furtherance of such improvements described in the above-mentioned Agreement and Contract Documents, this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement and the Contract Documents or to the work to be performed thereunder, or the Specifications or Plans accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, Contract Documents or to the Specifications or Plans.

PROVIDED FURTHER, that the surety agrees that any person to whom there is due any sum for supplies, materials, or labor, as herein before stated, or his assigns, may bring an action on this bond for the recovery of the indebtedness; PROVIDED, that no action shall be brought on the bond after six (6) months from the completion of said public improvements.

PROVIDED FURTHER, that it is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than fifty percent (50%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement as so amended. The term "amendment," wherever used in this bond and whether referring to this bond or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the CONTRACTOR has hereunto set his hand, and said surety has caused these presents to be executed in its name, and its corporate seal to be affixed by its attorney-in-fact duly authorized to do so at _____ on this, the day of _____, 2020.

[SEAL]

[Contractor/Principal]

[Title]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

NOTE:

1. A Statutory Bond is required only in connection with a Contract exceeding one hundred thousand dollars (\$100,000) in accordance with K.S.A. 60-1111 as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
6. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

SYNAGRO EQUIPMENT LIST

Synagro owns the following fleet of equipment which is available for back-up project operations or other services required by our clients.

<i>No.</i>	<i>Description</i>	<i>Capacity</i>
98	1/2-Ton Vehicles	4 x 4, 4-Wheel Drive, or Pickups
1	1-Ton Utility Service Trucks	4-Wheel Drive
9	3/4-Ton Service Trucks	4-Wheel Drive
1	Alkaline Stabilization System	Mobile or Skid-Mounted
57	Application Vehicles	Self-Propelled, High-Flotation, 10 - 17 Ton
5	Backhoes	1/4 Yard Bucket Capacity, Rubber Tired
23	Belt Press Dewatering Units	Mobile and Stationary
2	Bulldozers	Low Ground Pressure
25	Cake Applicators	Pull-type, Various Capacities
5	Chisel Plows	
3	Cranes Crawler, With Draglines	30-Ton
6	Discing Units	Large Blade, High Incorporation
3	Dredges, Mixer Barges, Mudcat Systems	
93	Dump Trailers	Aluminum, Various Capacities
5	Excavators	Track, 3 Yard Bucket Capacity
9	Fertilizer Truck/Spreader	
9	Flat Bed Trailers	
1	Forklifts	
5	Frac Tanks	22,000 Gallons
1	Fuel Tanks	10,000 Gallons
6	Generators	Mobile
1	Graders	
28	Lagoon Pumps	Barge-Mounted or High Horsepower PTO
10	Lowboy Trailers	20, 30, and 50 Ton
15	Mixers	Pug Mill, High-Torque, Variable Speed
2	Mowers	
2	Office Trailers	
47	Pumps, Various Types	Chopper, Hydraulic, Slurry, Trash, Water
103	Road Tractors	
7	Roll-off Containers, Platforms & Storage Units	
1	Roll-off Trucks	50,000 LB Hydraulic Hoists
3	Storage Tanks	Various Capacities
11	Storage Trailers	
143	Tank Trailers	Aluminum, Various Capacities
33	Tractors	All-Wheel Drive, 200 hp, Specialty Tires
27	Utility Trailers	Misc. Utility/Van
1	Vacuum Truck	3,150 Gallons
33	Wheel Loaders	High-Flotation, 3 - 5 Yd Bucket Capacity
17	Yard Tractors	

AGREEMENT BETWEEN CITY AND CONTRACTOR

This agreement ["Agreement"], is made as of this 19 day of October, 2020 by and between the City of Gardner, Kansas, [hereinafter "City"], and Synagro Central, LLC, [hereinafter referred to as "Contractor"] for the construction of the following described work: Kill Creek WWTP Digester Cleaning known as City of Gardner Project No. WW1808.

RECITALS

WHEREAS, the City desires to construct and complete Project No. WW1808.

WHEREAS, the City has caused to be prepared, in accordance with the law, Notice to Bidders, Instructions to Bidders, Bid, this Agreement, General and Special Conditions, Plans, Specifications and other Contract Documents (the "Contract Documents"), as defined in the General Conditions, for the work herein described, and has approved and adopted these said Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Contractor to be the lowest and best responsible bidder for the construction of the public improvements known as Project No. WW1808, and has duly awarded to the Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums named in the Bid attached to and made a part of this Agreement.

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the services of Contractor for the Kill Creek WWTP Digester Cleanout Project WW1808.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

- 1.0 Work to be Performed. The Contractor will furnish at his own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work designated, described and required by the Bid Documents and Contract Documents for City of Gardner Project No. WW1808. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

- 1.1 Contractor's Work. The Work to be performed by Contractor under this Agreement is as described in the Bid Documents, attached and incorporated by reference.
- 1.2 Performance Standard. Contractor represents to City that Contractor is professionally qualified to do this Project and if required, is licensed to practice the Work being offered by all public entities having jurisdiction over Contractor and the Project. Contractor specifically acknowledges and confirms that: 1.) Contractor has visited the site, made all inspections Contractor deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by Contractor as specified herein and in the other Contract Documents and knowingly accepts same; 2.) Contractor has furnished copies of all Contract Documents to Contractor's insurance carrier(s) and its surety(ies); and 3.) Contractor's insurance carrier(s) and surety(ies) agree to be bound as specified in this Agreement, in the Contract Documents, as set forth in the insurance policy(ies) and bonds pertaining to liability and surety coverage.
- 1.3 Assigned Personnel.
- a. Contractor shall only assign competent personnel to perform work hereunder. In the event that at any time City, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from City.
 - b. With respect to this Agreement, the Contractor shall employ the following key personnel: **_Pat Lappe, Will Walker, Ryan Rogers.**
 - c. In the event that any of Contractor's personnel assigned to perform Work under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor's shall be responsible for timely provision of adequately qualified replacements.
 - d. The Contractor shall designate **Pat Lappe** as Principal on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Contractor. So long as the individual named above remains actively employed or retained by Contractor, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Contractor will supply a direct name, phone number and email and will notify the City if this contact information changes during the contract period.
 - e. City shall designate Scott Millholland as the Project Representative to represent the City in coordinating this project with Contractor, with authority to transmit instructions and define policies and decisions of City. The written consent of the Department Director, and if applicable, City Administrator and/or Governing Body, shall be required to approve any increase in Project cost as defined in Exhibit B.

2.0 Commencement of Contract Time; Notice to Proceed.

- 2.1 The Contract Time will commence on the date stated in the Notice to Proceed. No Work shall be done at the site prior to issuance of a Notice to Proceed.

- 2.2 Before a Notice to Proceed will be issued, Contractor shall deliver to City certificates of insurance and such bonds as are required pursuant to the terms of this Agreement and the Contract Documents.
- 2.3 Before Contractor commences Work, a Pre-Construction Conference shall be held to review the progress schedules, to establish procedures for handling Shop Drawings and other submittals, and to establish a working understanding among the parties as to the Work to be performed pursuant to the terms of this Agreement and the Contract Documents.

3.0 Time of Performance.

- 3.1 Unless otherwise provide in this Agreement, Contractor shall commence Work upon the date stated in the Notice to Proceed, and will complete all Work covered by this Agreement and the Contract Documents within the time specified on the Notice to Proceed. Time is of the essence.
- 3.2 Progress Schedule
Within ten (10) days after the Effective Date of this Agreement and prior to commencing the Work, Contractor shall submit to City an estimated progress schedule indicating the starting and completion dates of the various phases of the Work, including the projected cost of each phase. The cost projection may serve as the basis for Progress Payments during the Work.
- 3.3 Computation of Time. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation. A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.
- 3.4 Changes in Contract Time. The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the contract time shall be based on written notice delivered by the party requesting the change to the other party promptly and stating the general nature of the claim. A written claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Engineer. Consideration may be given to requests for extensions of time due to inclement weather. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph. In executing this Agreement, Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, weather conditions, or otherwise.

- 3.5 Damages for City Delay. If Contractor shall be delayed at any time in the progress of the Work by any act or omission of City or by any separate contractor employed by City, and over which Contractor has no control, then the Contract Time shall be extended by written Change Order for such reasonable time as City may decide, and no adjustment shall be made in the Contract Price.
- 3.6 Work Stoppage. Contractor warrants to City that there will be no Work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and nonunion workforces at the Project site. Contractor further agrees that in the event of any strike, picket, sympathy strike, work stoppage or other form of labor dispute or picket in connection with the work of Contractor, other contractors, subcontractors, City, or any other person, Contractor will, contingent upon City providing a picket free entrance, continue to perform the Work required herein without interruption or delay.
- 3.7 Liquidated Damages.
- a. Due to the critical nature of this project, liquidated damages resulting from failure to meet the completion date, shall be charged against the Contractor at a rate of per the following schedule:

CONTRACT AMOUNT			LIQUIDATED DAMAGES
\$0	to	\$25,000	\$75
\$25,001	to	\$50,000	\$125
\$50,001	to	\$100,000	\$200
\$100,001	to	\$500,000	\$400
\$500,001	to	\$1,000,000	\$600
\$1,000,001	to	\$2,000,000	\$925
\$2,000,001	to	\$5,000,000	\$1,375
\$5,000,001	to	\$10,000,000	\$2,000
\$10,000,001	and	up	\$3,000

The amount shown above shall be the sum due for each 24-hour calendar day, including weekends and holidays, on the full bid price of the Contract for each day completion is not made in accordance with the project schedule. The assessed amount shall be deducted from the final invoice(s).

- b. Damages are only a reasonable estimate of City's damages due to loss of public use during any delay period.
- c. The City shall have the right to deduct the liquidated damages due to the public's loss of use of the project, and the City's actual costs to continue administration of the construction and the contract, from any monies due or any monies that may become due to the Contractor.

4.0 Payment.

- 4.1 City agrees to pay Contractor for the actual work performed in accordance with this Agreement and the Contract Documents on the Project at the rates set forth in the

Bid Form, which is attached hereto and incorporated by reference into this Agreement, the total of which shall not exceed a maximum total fee of \$123,930.27.

- 4.2 Contractor shall bill City monthly for all work performed. The bill submitted by Contractor shall itemize the work for which payment is requested. City agrees to pay Contractor within thirty (30) days of approval. Contractor agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law. City will pay or cause to be paid an amount equal to the estimated value of the Work performed less a retained amount in accordance with the following schedule:

- 1) Ten (10) percent until construction is substantially complete;
- 2) When the Work is substantially complete, the retained amount may be reduced to a lesser amount at the discretion of the Engineer.

- 4.3 All invoices should be sent to 1150 East Santa Fe St, Gardner KS 66030 or via email to jlemire@gardnerkansas.gov.

- 4.4 Right to Withhold Payment:

City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Contractor, to protect City from loss because of:

- 1) Defective Work not remedied by Contractor nor, in the opinion of City, likely to be remedied by Contractor;
- 2) Claims of third parties against City or City's property;
- 3) Failure by Contractor to pay Subcontractors or others in a prompt and proper fashion;
- 4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
- 5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
- 6) Persistent failure to carry out the Work in accordance with this Agreement;
- 7) Damage to City or a third party to whom City is, or may be, liable; or
- 8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

5.0 Substantial Completion.

- 5.1 When Contractor considers the entire Work ready for its intended use and all final restoration and testing is complete, Contractor shall notify City in writing that the entire Work is substantially complete and request that the Engineer issue a statement of Substantial Completion. Within a reasonable time thereafter, City and Contractor shall observe the Work to determine the status of completion. If City does not consider the Work substantially complete, City will notify Contractor in writing, giving its reasons therefore. If City considers the Work substantially complete, City will prepare a tentative statement of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the statement a tentative list of items to be completed or corrected before Final Payment. This list shall be called a Punch List. The statement shall state the responsibilities of City and Contractor for maintenance, utilities, damage to the Work and insurance if any of these items shall be treated differently upon

Substantial Completion and shall further state the time within which Contractor shall complete the items on the Punch List attached thereto.

- 5.2 City shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but City shall allow Contractor reasonable access to complete or correct items on the Punch List.

6.0 Partial Utilization of Work by City.

Use by City of any finished part of the Work, which has specifically been identified in the Contract Documents, or which City and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City without significant interference with Contractor's performance of the remainder of the Work shall be permitted. Such use and operation shall not constitute an acceptance of the Work, and Contractor shall be liable for defects due to faulty construction until the entire Work under this Agreement is finally accepted and for a period of two (2) years or longer thereafter as stipulated in these Contract Documents or by other law or regulation.

7.0 Completion and Final Payment.

- 7.1 Upon written notice from Contractor that Work or an agreed portion thereof is complete, Engineer will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.
- 7.2 If a repeat final inspection(s) is required, Contractor shall bear the cost of such repeat inspection, if any, including engineering and other professional fees. After Contractor has completed all such corrections and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after Engineer has indicated that the Work is complete, Contractor may make application for Final Payment request following the procedure for progress payment requests.
- 7.3 The Final Payment requests shall be accompanied by all documentation called for in this Agreement and the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to Final Payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to City to indemnify City against any lien.
- 7.4 If, on the basis of Engineer's observation of the Work during construction and final inspection, he determines that the Work has been completed and Contractor's

other obligations under the Contract Documents have been fulfilled, Final Payment certificates together with acceptance certificates will be submitted for payment.

8.0 Cash Basis and Budget Laws.

The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

9.0 Term of Agreement.

In the event that the Work rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the governing body of the City in the establishment of its annual budget.

10.0 Warranty and Defective or Unacceptable Work.

Contractor warranties and guarantees to City that all Work will be in accordance with the Contract Documents and will not be Defective or otherwise unacceptable. All Work which does not conform to the requirements of the Contract Documents shall be considered unacceptable. Defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist within the two (2) year warranty period or such longer time as may be permitted by law, shall be removed immediately and replaced in an acceptable manner. This provision shall have full effect regardless of the fact that the Defective Work may have been done or the defective materials used with the full knowledge of City. No inspection by City of the Work nor Final Acceptance of the project by City shall relieve Contractor of its responsibility to perform pursuant to the Contract Documents and provide acceptable Work. If Contractor fails to remove Defective Work within seven (7) days after written notice, the rejected material or Work may be removed and corrected by City pursuant to the provisions of the Contract Documents permitting City to correct the Defective Work.

11.0 Suspension of Work.

City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will not be allowed an increase in the Contract Price or an extension of the Contract Time, if such suspension is made as a result of an act or omission of Contractor including but not limited to the occurrence of any one or more of the following events:

1. If Contractor fails to supply a qualified superintendent, sufficient skilled workmen, Subcontractors, or suitable materials or equipment;

2. If Contractor repeatedly fails to make prompt payments to Subcontractors or suppliers or for labor, materials, or equipment;
3. If Contractor disregards Laws and Regulations of any public body having jurisdiction; or
4. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents, City shall have authority to suspend the Work wholly or in part, for such period of time as it may deem necessary, due to conditions unfavorable for the prosecution of the Work, or to conditions which in his opinion warrant such action, or for such time as is necessary by reason of failure on the part of Contractor to carry out orders given, or to perform any or all provisions of the Contract.

If it becomes necessary to suspend Work for an indefinite period of time, Contractor shall store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way; take every precaution to prevent damage or deterioration of the Work performed; provide suitable drainage of the roadway and erect temporary structures and protective barriers where necessary. Contractor shall not suspend Work without written authority from City.

12.0 Termination.

12.1 Right of City to Terminate Contract.

- a. Without in any manner limiting the right of City to terminate the Contract or declare Contractor in default thereof for any reason set forth in this Agreement or the Contract Documents, if:
 - 12.1.a.1 the Work to be done under this Agreement shall be abandoned by Contractor; or
 - 12.1.a.2 this Contract shall be assigned by Contractor otherwise than as herein provided; or
 - 12.1.a.3 Contractor should be adjudicated to be bankrupt; or
 - 12.1.a.4 a general assignment of its assets should be made for the benefit of its creditors; or
 - 12.1.a.5 a receiver should be appointed for Contractor or any of its property; or
 - 12.1.a.6 at any time City believes that the performance of the Work under this Contract is being unnecessarily delayed, that Contractor is violating any of the conditions or covenants of this Agreement or the specifications therefore, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Contract; or
 - 12.1.a.7 all bid items of the Project are not completed within the Contract Time named for their completion or within the time to which such completion date may be extended;

then, in addition to other rights City may choose to exercise, City may, at its option, serve written notice upon Contractor and its surety of City's intention to terminate this Agreement, and, unless within five (5) days after the serving of such notice upon Contractor, a satisfactory arrangement is made for the continuance thereof, this Contract shall cease and terminate.

- b. Whether or not a satisfactory arrangement has been proposed by the Contractor shall be in the sole discretion of the City. In the event of such termination, or in the event that Contractor fails to perform and abide by any obligation set forth herein in any respect, City shall immediately serve notice thereof upon the surety and Contractor, and the surety shall have the right to take over and complete the Work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of said notice of termination, City may take over the Work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of Contractor, and Contractor and its surety shall be liable to City for any and all excess cost sustained by City by reason of such prosecution and completion; and in such event City may take possession of, and utilize in completing the Work, all such materials, equipment, tools and plant as may be on the site of the Work and necessary therefore.
- c. When Contractor's services have been so terminated, such termination shall not affect any rights or remedies of City against Contractor then existing or which may later accrue. Similarly, any retention or payment of monies due Contractor shall not release Contractor from liability.
- d. City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Contractor, to terminate the Contract by providing written notice of such termination to Contractor specifying when such termination becomes effective. Upon receipt of such notice from City, Contractor shall: (1) immediately cease all Work; or (2) meet with City and, subject to City's approval, determine what Work shall be required of Contractor in order to bring the Project to a reasonable termination in accordance with the request of City. If City shall terminate for its convenience as herein provided, City shall: (1) compensate Contractor for all purchased materials and actual cost of Work completed to date of termination. Contractor agrees that it shall require all its Subcontractor agreements to contain a termination for convenience provision thereby releasing Contractor from its obligations to its subcontractors should City terminate this Agreement for convenience. The provision shall also contain a waiver of liability against City in the event of such termination.

12.2 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Administrator or Public Works Department Director, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

12.3 Right of Contractor to Terminate Contract. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by City or under an order of court or other public authority, or City fails to act on any payment request within sixty (60) days after it is submitted, then Contractor may, upon seven (7) days written notice to City, terminate this Agreement and recover from City payment for all work executed. In addition and in lieu of terminating this Agreement, if City has failed to make any payment as aforesaid, Contractor may

upon seven (7) days notice to City stop the Work until payment is made for all amounts then due. The provisions of this paragraph shall not relieve Contractor of his obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with City.

13.0 Indemnification.

To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Contractor or any permitted subcontractors hired by Contractor, the Contractor agrees to indemnify and hold harmless City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Contractor or its subcontractors. Contractor shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim.

14.0 Bonds.

14.1 Contractor shall, after receiving Notice of Award and prior to commencing the Work, furnish to City a Statutory Payment Bond, Performance Bond and Maintenance Bond on forms approved by City and secured by a surety company acceptable to City. With each bond there shall be filed with City one copy of a "Power of Attorney" certified to include the date of the bonds.

14.2 Contractor shall notify and obtain the consent and approval of Contractor's surety for all Change Orders and written amendments, if such notice is required by Contractor's surety or by law. Contractor's execution of a Change Order or written amendments to this Agreement shall constitute Contractor's warranty to City that the surety has been notified and that the surety consents to such Change Order or written amendment; accordingly surety shall be conclusively deemed to have been notified of such Change Order or written amendment and to have expressly consented thereto.

14.3 If Contractor's surety or any Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the State of Kansas, or it ceases to meet the requirements herein, Contractor shall within five (5) days thereafter substitute an acceptable surety and appropriate Bond.

15.0 Insurance.

15.1 The Contractor shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following insurance coverages as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

- ☐ Workers' Compensation and Employer's Liability - Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation

Act; the Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.

- ☐ Commercial General Liability for bodily injury and property damage liability claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees or Subcontractors with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, and collapse of building or damage to underground property and/or facilities.
- ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
- ☐ Professional Liability - The Contractor shall maintain Professional Liability insurance in an amount not less than \$500,000, and shall provide the City with certification thereof. **Used for design-build projects only - otherwise remove.**
- ☐ Additional Insurance - The Contractor shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.
- ☐ Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions

15.2 Subcontractor's Insurance.

If a part of the Contract is to be sublet, Contractor shall either:

- 1) Cover all subcontractors in Contractor's general liability insurance policy;
- 2) Require each subcontractor not so covered to secure insurance in the minimum amounts required of Contractor which will protect subcontractor and the City against all applicable hazards or risks of loss as and in the minimum amounts designated for the Contractor.

15.3 The City shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

15.4 Industry Ratings - The City will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of A or better;

AND

- 3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Contractor.

15.5 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.

15.6 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

16.0 Conflict of Interest.

Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its Work hereunder, including under 31 U.S.C.S. Section 1352. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed.

17.0 Nondiscrimination.

Contractor must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

18.0 Facilities and Equipment.

Contractor shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement.

19.0 Accessibility.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

20.0 Records, Ownership and Inspection.

20.1 Ownership of Documents.

All documents prepared by Contractor in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.

20.2 Open Records.

In recognition of the City's obligations under the Kansas Open Records Act ("KORA"), Contractor acknowledges that this Agreement along with any reports and/or records provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.

20.3 Maintenance of Records.

Except as otherwise authorized by the City, Contractor shall retain such documentation for a period of five (5) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this five (5) year period.

21.0 Patent Fees and Royalties.

Contractor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or Work performed hereunder, and Contractor further agrees to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement. It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the Contract Price. Final Payment to Contractor by City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

22.0 Independent Contractor.

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the

Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker's compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employee's compensation.

23.0 Compliance with Laws.

23.1 The Contractor shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.

23.2 Pursuant to K.S.A. 16-113, if the Contractor does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Contractor shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of the Contract.

24.0 Assignment.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. In case such consent is given, Contractor shall be permitted to subcontract a portion thereof, but shall perform with its own organization, Work amounting to not less than fifty percent (50%) of the total Contract Price. The subcontracting, assignment, delegation or transfer of the Work shall in no way relieve the Contractor of its liability under this Agreement and the bonds applicable hereto.

25.0 Confidentiality.

All reports and documents prepared by Contractor in connection with the performance of this Agreement are confidential until released by City to the public. Contractor shall not make any such documents or information available to any individual or organization not employed by Contractor or City without the written consent of City before any such release.

26.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To City: Jeff LeMire, Utilities Manager

Email: jlemire@gardnerkansas.gov

1150 E. Santa Fe St

Gardner, KS 66030

To Contractor: Erika Day
435 Williams Court, Suite 100
Baltimore, MD 21220

27.0 Amendments.

27.1 This document represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

27.2 The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by:

- a. Field Order;
- b. Engineer's review and approval of a Show Drawing or Sample;
- c. Engineer's written interpretation or clarification.

28.0 Waiver of Claims.

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither payment of any progress or final payment by City, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor any correction of Defective Work by City shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents. The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against City other than those claims previously made in writing against City by Contractor, pending at the time of final payment and identified in writing by Contractor as unsettled as of the time of request for final payment.

29.0 Remedies are not Exclusive.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto, including, but not limited to, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to City there under, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive Final Payment and termination or completion of this Agreement.

30.0 No Third Party Beneficiaries.

City and Contractor specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement

to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

31.0 Force Majeure.

City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

32.0 Titles.

The titles in this Agreement and the Contract Documents are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

33.0 Negotiations.

City and Contractor agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

34.0 Costs and Attorneys Fees.

If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

35.0 Severability.

If any term or portion of this Agreement or the Contract Documents is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement and the contract Documents shall continue in full force and effect.

36.0 Authority to Enter into Agreement.

Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement and the Contract Documents. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

37.0 Incorporation of Appendices.

Exhibit A - City PROJECT #_____, Addendum No. 1 to PROJECT #_____; Exhibit B - Contractor's Response to PROJECT #_____; Exhibit C - General Conditions; and Exhibit D - Special Conditions are attached hereto and made a part hereof as if fully set out herein.

38.0 Entire Agreement.

This Agreement and the Contract Documents represent the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

39.0 Governing Law and Venue.

This Agreement and the Contract Documents shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 7 day of OCTOBER, 2020

CITY OF GARDNER, KANSAS

CONTRACTOR - Synagro Central, LLC

(Mayor/City Administrator)



(Elizabeth Grant, Assistant Secretary)

ATTEST:

City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney

EXHIBIT A - PROJECT #_____

EXHIBIT B - CONTRACTOR'S RESPONSE TO BID #_____

COUNCIL ACTION FORM

NEW BUSINESS AGENDA ITEM NO. 1

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: STEVE SHUTE, MAYOR

Agenda Item: Consider the appointment of a City Prosecutor

Strategic Priority: Infrastructure and Asset Management

Department: Mayor and Council

Recommendation:

It is recommended to appoint Adam Chingren to the position of City Prosecutor effective November 1, 2020.

Background/Description of Item:

On August 30, 2020 City Prosecutor, Christopher Mann rendered his resignation effective October 28, 2020.

According to Municipal Code Chapter 2, Article 50, Section 060:

The Prosecuting Attorney shall be appointed by the Mayor with the consent of the Council, and shall prosecute all contested cases in Municipal Court and shall appear to prosecute such other cases as the judge of the Municipal Court shall deem necessary.

The recommended candidate was selected following a formal recruitment process conducted by Mayor Steve Shute and Business Services Manager Amy Foster. The candidate is available and agreeable to this appointment, if Council consents.

With Council's consent, the appointment is effective November 1, 2020, so that this Prosecutor can participate in Gardner Municipal Court in November.

Attachments:

Resume of Adam Chingren

Suggested Motion:

Appoint Adam Chingren to the position of City Prosecutor, effective November 1, 2020.

EDUCATION

University of Kansas School of Law, Lawrence, Kansas

Juris Doctor, May 2013

- Certificate in Advocacy

University of Kansas, Lawrence, Kansas

Bachelor of Arts in Political Science, December 2009

WORK EXPERIENCE

Rokusek Stein Law, LLC, Shawnee, Kansas

Associate Attorney, March 2019 – Present

- Provide legal assistance to clients involved in criminal cases and civil protection cases throughout Kansas and Missouri
- Representation in both District and Municipal courts

Johnson County Kanas Public Defender's Officer, Olathe, Kansas

Public Defender, May 2015 – March 2019

- Handled over 500 cases for defense of indigent persons charged with felony offenses;
- Interview clients and make initial decisions concerning such things as bail, release from custody, and mental competency to stand trial; determine need for expert witnesses;
- Prepare the drafting of briefs, memoranda, pleadings, and motions; conduct legal research, pre-trial hearings, and other proceedings;
- First and second chair jury trial experience

Cordell and Cordell, P.C., Overland Park, Kansas

Associate Attorney, January 2015 – May 2015

- Representing clients in various domestic relations cases including divorce, modification of custody and support, declaration of paternity, contempt proceedings, and property division
- First chair experience in civil trials and contested hearings, depositions and other discovery

Chingren Law Firm, LLC, Overland Park, Kansas

Attorney, January 2014 – December 2014

- Represent clients in court on a weekly basis in situations including divorce, child in need of care, termination of custody, contempt of court, DWI, DUI, adult and juvenile misdemeanors

Stueve, Siegel, and Hanson, Kansas City, Missouri

Contract Attorney, October 2013 – December 2013

- Assist in client evaluation for ongoing class action law suit and draft complaints for ongoing class action and individual law suits

United States Attorney's Office, Western District of Missouri, Kansas City, Missouri

Law Clerk, Computer Crimes and Child Exploitation Division, May 2012 – August 2012

- Assisted in research and investigation of Federal cases
- Appear in Federal Court for prosecution of petty crimes docket

COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 2

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: AMY FOSTER, BUSINESS SERVICES MANAGER

Agenda Item: Consider adopting an ordinance regulating traffic upon the streets, alleys and highways of the City of Gardner, Kansas; incorporating by reference the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020" and all acts supplementary and amendatory thereto, prepared and published in booklet form by the League of Kansas Municipalities; certain chapters of Title 10 of the Municipal Code of the City of Gardner, Kansas 2020 Edition, with certain deletions, omissions, changes and additions; prescribing additional regulations; and repealing Ordinance No. 2591, under the provisions of K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302

Strategic Priority: Quality of Life

Department: Police and Finance

Staff Recommendation:

Staff recommends adopting an ordinance incorporating by reference the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020" with additions and amendments as noted within the proposed ordinance.

Background/Description of Item:

Each year, the League of Kansas Municipalities publishes the "Standard Traffic Ordinance for Kansas Cities." Gardner routinely adds provisions for careless driving, prohibiting vehicle idling, parking restrictions, transportation of alcoholic beverage, prohibiting the use of any compression release engine braking system, and establishing maximum speed limits for streets and parks within the City and has incorporated such provisions within the proposed ordinance. We are proposing the addition and numbering changes of Article 30. Section B, Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

(b) Driving under the influence is

1. An Ordinance Violation

(a) On a first conviction of a violation of this section, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(b) On a second conviction of a violation of this section the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released.

The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the residence provided for in the house arrest agreement shall not be counted as part of 120 hours;

(c) On a third conviction of a violation of this Section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750.00 nor more than \$2,500.00. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(d) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

Other routine changes for this year include updating the reference to the Standard Traffic Ordinance for Kansas Cities to reflect the 2020 Edition and updating the reference to the City of Gardner Standard Traffic Ordinance to reflect the 2020 Edition.

Judge Lewis and City Prosecutor Repp reviewed the new edition of the Standard Traffic Ordinance and did not request any additional changes. City Attorney Denk reviewed and approved this ordinance.

Financial Impact:

N/A

Attachments included:

- Ordinance No. 2681

Suggested Motion:

Adopt Ordinance No. 2681, an ordinance regulating traffic upon the streets, alleys and highways of the City of Gardner, Kansas; incorporating by reference the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020" and all acts supplementary and amendatory thereto, prepared and published in booklet form by the League of Kansas Municipalities; certain chapters of Title 10 of the Municipal Code of the City of Gardner, Kansas 2020 Edition, with certain deletions, omissions, changes and additions; prescribing additional regulations; and repealing Ordinance No. 2591, under the provisions of K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302.

ORDINANCE NO. 2681

AN ORDINANCE REGULATING TRAFFIC UPON THE STREETS, ALLEYS AND HIGHWAYS OF THE CITY OF GARDNER, KANSAS; INCORPORATING BY REFERENCE THE "STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES: EDITION OF 2020" AND ALL ACTS SUPPLEMENTARY AND AMENDATORY THERETO, PREPARED AND PUBLISHED IN BOOKLET FORM BY THE LEAGUE OF KANSAS MUNICIPALITIES; CERTAIN CHAPTERS OF TITLE 10 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS 2020 EDITION, WITH CERTAIN DELETIONS, OMISSIONS, CHANGES AND ADDITIONS; PRESCRIBING ADDITIONAL REGULATIONS; AND REPEALING ORDINANCE NO. 2591, UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012 AND K.S.A. 12-3301 AND 12-3302.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS;

SECTION ONE: That certain standard code known as the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this Ordinance, including supplements and amendments thereto, save and except such portions as may hereinafter be deleted, added, or amended, as authorized and in the manner prescribed by the Statutes of the State of Kansas.

SECTION TWO: That Ordinance 2591, as amended, is repealed and Chapter 10.05 is amended to read as follows:

CHAPTER 10.05 Standard Traffic Ordinance

10.05.010 STANDARD TRAFFIC ORDINANCE

The certain standard code known as the "Standard Traffic Ordinance for Kansas Cities: Edition of 2020", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this chapter, including supplements and amendments thereto, save and except such portions as are hereinafter be deleted, added, or amended by this chapter. (K.S.A. 12-3009 through 12-3012, 12-3301 and 12-3302)

10.05.020 MARKED COPIES OF STANDARD CODE ON FILE.

No fewer than three copies of the standard code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 2681". All sections or portions of the filed copies of the standard code shall be clearly marked to show deletions from the standard code. Any additions shall be clearly described to show such addition to said standard code, and a copy of the Ordinance shall be open to inspection and available to the public at all reasonable business hours. The Police Department, Municipal Court Judge and all administrative departments of the City charged with the enforcement of the Ordinance shall be supplied, at the cost of the City, such number of official copies of said standard code, similarly marked, deleted and changed, as may be deemed expedient.

SECTION THREE: That Ordinance 2591, as amended, is repealed and Chapter 10.10 is amended to read as follows:

CHAPTER 10.10 Local Traffic Regulations

10.10.010 AMENDMENTS TO STANDARD TRAFFIC ORDINANCE – PENALTIES.

The Governing Body of the City of Gardner, Kansas, on the basis of an engineering and traffic investigation conducted by the Police Department of the City of Gardner, Kansas, and adopted by the Governing Body of the City of Gardner, Kansas, pursuant to its authority under K.S.A. 8-1560, K.S.A. 8-2002 and all acts supplemental and amendatory thereto hereby deems it advisable to add Section 29.1, add Section 83.1, add Section 85.1, add Section 85.2, add Section 106 (a)(4), amend Section 33(a), and amend Section 175.1 of said standard code adopted in GMC 10.05.010 to read as follows:

A. SECTION 29.1. Careless Driving

- (a) Any person who shall operate or halt any vehicle in such a manner as to indicate a careless or heedless disregard for the rights or the safety of others or in such manner as to endanger or to be likely to endanger any person and/or personal property, is guilty of careless driving.
- (b) This offense shall be considered a traffic infraction.

B. Section 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

(b) Driving under the influence is

1. An Ordinance Violation

(a) On a first conviction of a violation of this section, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(b) On a second conviction of a violation of this section the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the residence provided for in the house arrest agreement shall not be counted as part of 120 hours;

(c) On a third conviction of a violation of this Section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750.00 nor more than \$2,500.00. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after

such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(d) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

C. SECTION 33. Maximum Speed Limits

- (d) Except when a special hazard exists that requires lower speed for compliance with Section 32, the limits specified in this section or established as hereinafter authorized shall be the maximum lawful speeds, and no persons shall drive a vehicle at a speed in excess of such maximum limits.

1. 25 miles per hour on any street or highway unless posted otherwise;
2. 20 miles per hour in any park unless posted otherwise; and
3. School zones shall have reduced limits as posted while school is in session.

Whenever it is determined on the basis of an engineering and traffic investigation that any speed limit posted is greater or less than is reasonable or safe under the conditions found to exist, the Governing Body shall declare and determine a reasonable and safe speed limit and cause appropriate signs to be erected as set forth in the Gardner Speed Limit Map maintained by the City Engineer.

D. SECTION 83.1. Vehicle Idling Prohibited

1. Definitions.

IDLE—The motor vehicle operating mode consisting of a nonleaded, throttled engine speed at the revolutions per minute specified by the manufacturer.

MOTOR VEHICLE—any on road, self-propelled vehicle that is required to be registered and have a license plate by the Department of Motor Vehicles.

PERSON—Corporations, companies, associates, societies, firms, partnerships, and joint-stock companies as well as individuals, and shall also include all political subdivisions of this state or any agencies or instrumentalists thereof.

PUBLIC AND PRIVATE PROPERTY—All real estate within the City, including Inter alia, public and private parking lots, on which a motor vehicle may be physically located except for the public streets and highways within the city.

RESTRICTED IDLING ZONES—Areas within City limits that are considered moderate to high emission zones.

2. Idling Prohibited; Motor Vehicles.

A. No person shall cause, suffer, allow or permit the engine of a motor vehicle to idle for more than ten (10) consecutive minutes if the vehicle is within one of the designated areas of limited idling zones that include:

1. Any City parking lot or city property,
2. Any City owned or operated park area including but not limited to the municipal golf course,
3. Pick-up or drop-off areas on all school property, parking lots, and commercial delivery/loading zones,
4. Commercial and Industrial delivery zones, including but not limited to private drives or area leading to the delivery zone.

B. Subsection A of this section shall not apply to the following:

1. Emergency vehicles,
2. RV's, school buses, other modes of public transit, and charter buses,
3. Temperatures below 32 degrees and in excess of 85 degrees per the National Oceanic and Atmospheric Administration (NOAA).

C. Upon conviction of a first offense of this section, the defendant shall be fined not less than \$50.00 nor more than \$1,000.00. Upon conviction for a second offense, within a twenty-four (24) month period, the defendant shall be fined not less than \$100.00 nor more than \$1,000.00. Upon conviction of a third offense of this section, within a twenty-four (24) month period, the defendant shall be fined not less than \$250.00 nor more than \$1,000.00. No portion of any minimum fine assessed pursuant to this section shall be suspended nor shall the defendant be placed on parole from any portion of the penalty assessed.

E. SECTION 85.1. Parking In Certain Designated Areas Prohibited

- (a) No person shall park, stop, or operate a motor vehicle in or on any private or public parking area or lot that is posted with notice of prohibited parking signs posted as provided herein.
- (b) The provisions of this section shall not be applicable to any parking lot or area unless the following signage is clearly and properly posted at all entrances to said parking areas or lots, to-wit:

NOTICE

Pursuant to City of Gardner Standard Traffic Ordinance Section 85.1, no parking, stopping, or operation of a motor vehicle is permitted in this parking area or lot

during the hours of _____ to _____. Conviction of a violation of this section shall result in a minimum fine of \$100.00.

- (c) The provisions of this section shall not apply to individuals conducting business or working on the premises of building served by the posted parking areas or lots.
- (d) Upon conviction of a first offense of this section, the defendant shall be fined not less than \$100.00 nor more than \$1,000.00. Upon conviction for a second offense, within any given twelve-month period, the defendant shall be fined not less than \$250.00 and not more than \$1,000.00. Upon conviction of a third offense of this section during any twenty-four month period, the defendant shall be fined not less than \$500.00 nor more than \$1,000.00. No portion of any minimum fine assessed pursuant to this section shall be suspended nor shall the defendant be placed on parole from any portion of the penalty assessed.

F. SECTION 85.2. Parking Restrictions in Residential Zoning Districts.

- (a) No person shall park any motor vehicle other than an operable passenger car; passenger van with rear side windows and rear passenger seats; pickup truck not modified with aerial buckets or platforms (e.g. "cherry pickers"), welding equipment, and mechanical lifts or arms designed to assist in loading and unloading freight, or motorcycle; on any street or alley within a residential zoning district except when necessary for loading and unloading or within the performance of a service, and construction vehicles while being used in connection with construction or maintenance authorized by the City or upon property in the block the vehicle is parked.
- (b) Passenger car, passenger van, pickup truck, or motorcycle means a vehicle licensed for use on public streets; designed primarily for the transportation of people as opposed to equipment, freight, or other vehicles; and sold primarily to individuals for personal use.
- (c) Trailers attached or detached from a passenger car, passenger van, pickup truck, or motorcycle are not allowed.
- (d) Upon conviction of a first offense of this section, the defendant shall be fined not less than \$100.00 nor more than \$1,000.00. Upon conviction for a second offense, within any given twelve-month period, the defendant shall be fined not less than \$250.00 and not more than \$1,000.00. Upon conviction of a third offense of this section during any twenty-four-month period, the defendant shall be fined not less than \$500.00 nor more than \$1,000.00.

G. SECTION 106. Transportation of Alcoholic Beverage

- (a) (4) Placed behind the last upright seat or in an area not normally occupied by the driver, or passenger, if a motor vehicle does not have a trunk.

H. SECTION 175.1. Compression Release Engine Braking System.

- (a) It shall be unlawful for the driver of any motor vehicle to use or cause to be used or operated any compression release engine braking system; provided, however, that such brakes may be used in an emergency situation where the use of an engine braking mechanical exhaust device is necessary for the protection of persons or property.
- (b) Upon conviction of a first offense of this section, the defendant shall be mandated to appear in court and shall be fined not less than \$250.00 nor more than \$1,000. Upon

conviction of a second offense of this section, within a twenty-four (24) month period, the defendant shall be mandated to appear in court and shall be fined not less than \$350.00 nor more than \$1,000. Upon conviction of a third offense of this section, within a twenty-four (24) month period, the defendant shall be mandated to appear in court and shall be fined not less than \$500.00 nor more than \$1,000. No portion of any minimum fine assessed pursuant to this section shall be suspended nor shall the defendant be placed on parole from any portion of the penalty assessed.

- (c) Definition: Compression Release Engine Braking System. A hydraulically operated device that converts a power producing diesel engine into a power absorbing retarding mechanism. (K.S.A. Supp 8-1761).

10.10.020 INVALIDITY IN PART. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this Chapter.

10.10.030 PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than \$10.00 nor more than \$2,500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$2,500.00.

10.10.040 CONFLICTING ORDINANCES. Where this chapter conflicts with any other state or federal ordinance, statute, or regulation, the most restrictive ordinance, statute, or regulation shall apply. All local ordinances, or parts of local ordinances, in conflict herewith be and the same are hereby repealed.

SECTION FOUR: This ordinance shall take effect and be in force from and after its publication as provided by law.

PASSED and APPROVED this 19th day of October, 2020.

(SEAL)

CITY OF GARDNER, KANSAS

Steve Shute, Mayor

Attest:

Sharon Rose, City Clerk

Approved as to form:

Ryan B. Denk, City Attorney

COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 3

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: AMY FOSTER, BUSINESS SERVICES MANAGER

Agenda Item: Consider adopting an ordinance fixing certain standards of conduct for persons within the City of Gardner, Kansas; making violation of any such standards a public offense, subject to penalty; incorporating by reference the "Uniform Public Offense Code for Kansas Cities: Edition of 2020", and all acts supplementary and amendatory thereto, prepared and published in booklet form by the League of Kansas Municipalities; and repealing all ordinances and parts of ordinances in conflict herewith, under the provisions of K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302

Strategic Priority: Quality of Life

Department: Police and Finance

Staff Recommendation:

Staff recommends adopting an ordinance incorporating by reference the "Uniform Public Offense Code for Kansas Cities: Edition of 2020" with additions, deletions, and amendments set forth therein.

Background/Description of Item:

Each year, the League of Kansas Municipalities publishes the "Uniform Public Offense Code for Kansas Cities." The City of Gardner routinely adds provisions for: criminal littering, riding or leading horses upon the Gardner golf course; disturbing the peace; unlawful juvenile activity; urination or defecation in public; explosives; storage of explosives; transportation or storage of nitroglycerin; discharge and sale of fireworks; fireworks permit application; requirements, inspections, violations and penalties and burning ban related to fireworks stand(s); prohibition of sex bookstores, coin-operated motion picture devices showing sex movies, and eating or drinking establishments featuring nude dancers or similar entertainment. The proposed Ordinance includes and incorporates these provisions.

The most notable change this year is the State has adopted the Tobacco 21 Legislation through the Kansas "Uniform Public Offense Code: The addition reads as follows.

5.7 SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A MINOR.

(A) It shall be unlawful for any person to:

1. Sell, furnish or distribute cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age; or
2. Buy any cigarettes, electronic cigarettes, or tobacco products for any person under the age of 21 years of age.

(B) It shall be a defense to a prosecution under this section if:

1. The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
2. The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of

legal age to purchase or receive cigarettes, electronic cigarettes or tobacco products; and

3. To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, or tobacco products.
4. For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(C) It shall be a defense to a prosecution under this subsection if:

1. The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and
2. The defendant sold, furnished, or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 21 or more years of age.

(D) As used in this section, sale means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.

(E) Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.00. (K.S.A. 79-3302, 79-3321:79-3322

Additionally, the following was added:

Section 10.1.1 (a) (4) Criminal Carrying of a Weapon that read as follows:

(4) Any pistol, revolver or other firearm concealed on one's person if such person is under 21 years of age, except when on such person's land or in such person's abode or fixed place of business,.

Section 10.29 Violation of a Public Health O

(a) It shall be unlawful for any person to violate, refuse, or fail to comply with, a written order of the County Health Officer, Board of Health, or Director of Health issued under the respective authorities.

Consistent with last year's amendments, upon the recommendation of Judge Lewis and City Prosecutor Repp, the City will omit Section 4.5. Buying Sexual Relations and Section 4.5.1. Unlawful Use of a Communications Facility, as these offenses will be charged under the jurisdiction of Johnson County District Court. Gardner also routinely deletes Section 10.13 which states that barbed wire fences are illegal.

Other routine changes for this year include updating the reference to the Uniform Public Offense Code for Kansas Cities to reflect the 2020 Edition and updating the reference to the City of Gardner Uniform Public Offense Code Ordinance to reflect the adoption of 2020 Edition, as amended by the Ordinance.

Municipal Judge Lewis, City Prosecutor Repp, and City Attorney Denk reviewed the 2020 Edition of the Uniform Public Offense Code and the recommendations and concur.

Attachments included:

- Ordinance No. 2682

Suggested Motion:

Adopt Ordinance No. 2682, an ordinance fixing certain standards of conduct for persons within the City of Gardner, Kansas; making violation of any such standards a public offense, subject to penalty; incorporating by reference the "Uniform Public Offense Code for Kansas Cities: Edition of 2020 ", and all acts supplementary and amendatory thereto, prepared and published in booklet form by the League of Kansas Municipalities; and repealing all ordinances and parts of ordinances in conflict herewith, under the provisions of K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302.

ORDINANCE NO. 2682

AN ORDINANCE FIXING CERTAIN STANDARDS OF CONDUCT FOR PERSONS WITHIN THE CITY OF GARDNER, KANSAS; MAKING VIOLATION OF ANY SUCH STANDARDS A PUBLIC OFFENSE, SUBJECT TO PENALTY; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES: EDITION 2020", AND ALL ACTS SUPPLEMENTARY AND AMENDATORY THERETO, PREPARED AND PUBLISHED IN BOOKLET FORM BY THE LEAGUE OF KANSAS MUNICIPALITIES; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith, UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012 AND K.S.A. 12-3301 AND 12-3302.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE. That certain standard code known as the "Uniform Public Offense Code for Kansas Cities: Edition of 2020", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this ordinance including supplements and amendments, thereto, save and except such portions as may hereinafter be deleted, added or amended, as authorized and in the manner prescribed by the Statutes of the State of Kansas.

SECTION TWO. That Chapter 9.05 of the Municipal Code of the City of Gardner, Kansas 2020, be and the same is hereby amended to read as follows:

CHAPTER 9.05 Uniform Offense Code.

9.05.010 UNIFORM OFFENSE CODE. The certain standard code known as the "Uniform Public Offense Code for Kansas Cities: Edition of 2020", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this chapter, including supplements and amendments thereto, save and except such portions as are hereinafter deleted, added or amended by this chapter. (K.S.A. 12-3009 through 12-3012, K.S.A. 12-3301, K.S.A. 12-3302)

9.05.020 MARKED COPIES OF STANDARD CODE ON FILE. No fewer than three copies of the Uniform Code shall be marked or stamped "Official Copy, adopted by Ordinance No. ____." All sections of portions of the filed copies of the standard code shall be clearly marked to show deletions from the standard code. Any additions shall be clearly described to show such addition to said standard code and a copy of the ordinance shall be attached to it and filed with the City Clerk to be open to inspection and available to the public at all reasonable business hours. The Police Department, Municipal Court Judge, and all administrative departments of the City charged with the enforcement of the ordinance shall be supplied, at the cost of the City, such number of official copies of said standard code, similarly marked, deleted and changed as may be deemed expedient.

9.05.030 AMENDMENTS AND ADDITIONS TO UNIFORM PUBLIC OFFENSE CODE. The following amendments to the Uniform Public Offense Code are hereby made:

4.6 DEFINITIONS. For the purpose of this article, the definitions provided by K.S.A. 21-5501 of "sexual intercourse", "sodomy", "spouse", and "unlawful sexual act" shall apply unless a different meaning is plainly required.

6.8 CRIMINAL LITTERING.

(A) Criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

1. Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
2. Any private property without the consent of the owner or occupant of such property.

- (B) Criminal littering is an unclassified violation punishable:
 - 1. Upon a first conviction by a fine of not less than \$250 nor more than \$1,000;
 - 2. Upon a second conviction by a fine of not less than \$1,000 nor more than \$2,000; and
 - 3. Upon a third or subsequent conviction by a fine of not less than \$2,000.
- (C) In addition to the fines in subsection (b), a person convicted of criminal littering shall be required to pick up litter for a time prescribed by and a place within the jurisdiction of the court.

6.26 RIDING OR LEADING HORSES, OPERATING UNAUTHORIZED VEHICLES UPON GARDNER GOLF COURSE. It shall be unlawful for any person to ride or lead a horse or operate a vehicle other than an electric or gasoline powered golf cart upon the fairways or other grassy playing areas of Gardner Golf Course.

Nothing in this section shall prohibit the use of mowing devices attached to or integral with tractors or riding lawn mowers or other vehicles associated with the maintenance of the Gardner Golf Course when operated by employees of the City of Gardner or Gardner Golf Course.

Violation of this section is an unclassified misdemeanor.

9.3 DISTURBING THE PEACE.

- (A) It shall be unlawful for any person to:
 - 1. Make, continue, maintain or cause to be made or continued any excessive, unnecessary, unreasonable or unusually loud noise or any noise in such manner as to annoy, offend, disturb, injure or endanger the comfort, repose, health, peace or safety of any reasonable person of normal auditory sensitivity residing in the area.
 - 2. Use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of any reasonable person of normal auditory sensitivity inhabiting the area.
 - 3. Congregate because of, participate in or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of any reasonable person of normal auditory sensitivity residing in any residential area. No person shall visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating said disturbance. A police officer may order all persons present in any group or gathering from the dwelling unit to immediately disperse in lieu of being charged under this Section.
- (B) Prima Facie Violation: The operation of any tool, equipment, vehicle, electronic device, set, instrument, television, phonograph, machine or other noise- or sound-producing device at any time in such a manner as to be plainly audible across a property boundary line in a residential area, or for fifty feet (50') or more in the case of a multiple-family dwelling, between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. shall be prima facie evidence of a violation of this Section.
- (C) Exceptions: The following shall not be considered to be violations of this Section:
 - 1. Sound from law enforcement motor vehicles and other emergency motor vehicles including, but not limited to, snow-clearing equipment;
 - 2. Sound from vehicles or equipment belonging to the city, state, county, federal government, school or other governmental agencies or utilities employed by a governmental agency engaged in preparing for or remedying a potentially hazardous

situation in which immediate physical trauma or property damage is occurring or threatened;

3. Sound that a person is making or causing to be made when said person has received and maintains a valid license or permit that specifically allows the sound from any department, board or commission of the City authorized to issue a license or permit; and
4. Sound from the operation of emergency generators used in emergency situations when electricity from the grid is unavailable.
5. Sound from the lawful use of fireworks as provided in Section 10.30.
6. Sound from the use of sound amplifiers, loud speakers or other devices emitting loud noises during unusual and non-commercial, national, state or municipal events of general public interest.

9.6 UNLAWFUL JUVENILE ACTIVITY

(A) It shall be unlawful for any juvenile to loiter on or about any street, road, highway, sidewalk, curb gutter, building, parking lot, alley, vacant lot, park, playground or yard, whether public or private, without the consent or permission of the owner or occupant thereof, during the hours between 11 P.M. and 6 A.M. unless accompanied by a parent, legal guardian, or other adult person over the age of twenty-one (21) years, who has been given custody or control over the juvenile by the juvenile's parent or legal guardian.

(B) It shall be unlawful for the parent, legal guardian, or any other person having custody or control of any juvenile to permit, or by insufficient control, to allow such juvenile to violate subsection (a) of this section.

(C) As used in this section:

"Loiter" shall mean remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include but be not limited to standing around, hanging out, sitting, kneeling, sauntering and prowling. "Juvenile" shall mean any person under the age of eighteen (18) years.

(D) Violation of this Section is a Class B Public Offense.

9.14 URINATION OR DEFACATION IN PUBLIC

(A) It is unlawful for any person to urinate or defecate upon any street, highway, alley, or upon the premises of any public place or building, or upon any private property in open view or any person, except if such public place, building or private property has been designated and designed as a restroom, lavatory or water closet.

(B) Urination or defecation in public is a Class C violation.

10.9.1 EXPLOSIVES. It shall be unlawful for any person, firm or corporation to sell, give away, or otherwise dispose of any detonating explosive without keeping a record as required by K.S.A. 21-6311; It shall also be unlawful for any person to possess any explosive or detonating substance who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony as prohibited by K.S.A. 21-6312(a); it shall also be unlawful for any person, firm or corporation to sell, give away or otherwise dispose of any of the explosives named above to any intoxicated or irresponsible person K.S.A. 21-6312; and when said explosives shall lawfully be in the possession of any person, firm or corporation they shall not be kept closer to any inhabited building than provided in K.S.A. 21-6318; and no person having in his possession any of the explosives mentioned above shall carry same in a wholly or partially concealed manner on or about his person.

Violation of this section is an unclassified misdemeanor.

10.9.2 STORAGE OF EXPLOSIVES. It shall be unlawful for any person, firm or corporation to bring into, keep or store within the corporate limits of this City, gunpowder or blasting powder in quantities of more than seventy-five pounds (75 lbs.) or dynamite in quantities of more than fifty pounds (50 lbs.).

Violation of this section is an unclassified misdemeanor.

10.9.3 NITROGLYCERIN. It shall be unlawful for any person to transport or convey through or along the streets or to keep in this City any liquid nitroglycerin.

Violation of this section is an unclassified misdemeanor.

10.28 CONTROLLED SUBSTANCES

(a) Possession of Marijuana; Penalties.

- (1) It shall be unlawful for any person to manufacture, possess, have under such person's control, administer, deliver, distribute, dispense or compound marijuana.
- (2) As used in this section, "marijuana" means all parts of all varieties of the plant cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.
- (3) Upon a conviction, plea of no contest or guilty for violation of this section by a person 18 or more years of age, but less than 21 years of age, the Municipal Judge shall order such person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that person is indigent, the fee may be waived.

(b) Use or Possession of Controlled Substances, Simulated Controlled Substances and Drug Paraphernalia; Penalties.

- (1) It shall be unlawful for any person to manufacture, possess, have under such person's control, administer, deliver, distribute, dispense or compound any controlled substances, simulated controlled substances, or drug paraphernalia.
- (2) Definitions. As used in this section:
 - (A) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
 - (B) "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.
 - (C) "Drug paraphernalia" means all equipment, products and materials of any kind which are used or are primarily intended and designed for uses in

planting, propagating, cultivating, growing, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substance Act. "Drug paraphernalia: shall include, but is not limited to:

(.1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting species of plant which is a controlled substance or from which controlled substances can be derived.

(.2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

(.3) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.

(.4) Testing equipment used or intended for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.

(.5) Scales and balances used or intended for use in weighing or measuring controlled substances.

(.6) Diluents and adulterants such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.

(.7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana.

(.8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.

(.9) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.

(.10) Containers and other objects used or intended for use in storing or concealing controlled substances.

(.11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.

(.12) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(.a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(.b) Water Pipes;

(.c) Carburetion Tubes and Devices;

(.d) Smoking and Carburetion Masks;

(.e) Roach clips (objects used to hold burning material, such as marijuana cigarette that has become too small or too short to be held in the hand);

(.f) Miniature Cocaine spoons and Cocaine vials;

(.g) Chamber Pipes;

(.h) Carburetor Pipes;

(.i) Electric Pipes;

(.j) Air-driven Pipes;

(.k) Chillums;

(.l) Bongs;

(.m) Ice Pipes or Chillers;

(.n) Any smoking pipe manufactured to disguise its intended purpose;

(.o) Wired cigarette papers; or

(.p) Cocaine freebase kits.

(D) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership, association or other legal entity.

(E) "Simulated Controlled Substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

(F) "Minor" shall mean any person who has not attained eighteen (18) years of age.

(G) "Premises open to minors" means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

(H) "Place of display" means any museum, library, school or other similar public place upon which business is not transacted for a profit.

- (I) "School" means any public or private elementary, junior high or high school.
 - (J) "Close proximity" means within one thousand five hundred (1,500) feet on a straight line commencing at the property lines nearest to each other.
 - (K) "Premises" means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.
- (3) In determining whether an object is drug paraphernalia, a court or other authority shall consider in addition to all other logically relevant factors, the following:
- (A) Statements by an owner or person in control of the object concerning its use.
 - (B) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.
 - (C) The proximity of the object in time and space, to a direct violation of the uniform controlled substances act.
 - (D) The proximity of the object to controlled substances.
 - (E) The existence of any residue of controlled substances.
 - (F) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person, the owner or person in control of the object knows or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia.
 - (G) Oral or written instructions provided with the object concerning its use.
 - (H) Descriptive materials accompanying the object which explain or depict its use.
 - (I) National and local advertising concerning the object's use.
 - (J) The manner in which the object is displayed for sale.
 - (K) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products.
 - (L) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
 - (M) The existence and scope of legitimate uses for the object in the community.
 - (N) Expert testimony concerning the object's use.
- (4) Sales and Display Prohibited.

(A) It shall be unlawful for any person, firm or corporation to sell, offer to sell, dispense, give away or display any instrument or simulated controlled substance or simulated drug in or upon any premises which;

(.1) Are premises open to minors;

(.2) Are places of display; or

(.3) Are in close proximity to a school.

Provided, however, that display of any such items at a place of display for educational or scientific purposes shall not be unlawful.

(B) A violation of Section 10.28 (3) is declared to be public nuisance and shall be subject to abatement as provided by law.

(5) No person shall use or possess with intent to use:

(A) Any simulated controlled substances; or

(B) Any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act.

(C) Upon a conviction, plea of no contest or guilty for violation of this section by a person 18 or more years of age, but less than 21 years of age, the Municipal Judge shall order such person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that person is indigent, the fee may be waived.

Any person who violates this section 10.28, shall, unless otherwise stated, be guilty of a Class A Public Offense.

10.30 DISCHARGE and SALE OF FIREWORKS.

A. DEFINITIONS. As used in this Section, unless the context clearly indicates otherwise, the following words and terms have the following meanings:

1. "Fireworks" - mean any combustible or deflagrating composition, article, or device suitable for the use of the public for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and previously approved for transportation by the chemical laboratory of the United States Department of Transportation.

a. "1.4G, UN0336 (Consumer) Fireworks" - Small firework devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the Department of Transportation for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission, and as set forth in 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this Code. (The fireworks in this definition were formerly known as Class C, Common Fireworks).

b. "1.3G, UN0335 (Display) Fireworks" - Large firework devices, which are explosive materials, intended for use in fireworks displays and designed to

produce audible or visual effects by combustion, deflagration or detonation. Such 1.3G, UN0335 fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as 1.4G, UN0335 fireworks. (The fireworks in this definition were formerly known as Class B, Special fireworks).

2. "Fireworks Stand" - means any permanent or temporary building, trailer, tent, display, awning, canopy, temporary membrane structure, or location from which a Person sells or otherwise distributes 1.4G, UN0336 (Consumer) Fireworks within the city limits of Gardner, Kansas.
 3. "Operator" - means any Person who sells or otherwise distributes 1.4G, UN0336 Fireworks or owns, manages or operates a Fireworks Stand.
 4. "Person" - means an individual, organizational entity of any type, partnership, church, corporation, limited liability company, trust, association of any type, or any agent, officer, employer, committee, or group of any of the foregoing.
- B. DISCHARGE OF FIREWORKS. It shall be unlawful to ignite, explode, discharge, or use any Fireworks within the city limits, except as follows.
1. Consumer Fireworks, 1.4G, UN0336 – 1.4G, UN0336 consumer fireworks may lawfully be ignited, exploded, discharged or used within city limits as follows:
 - a. Date and Time Limitations. The use of consumer fireworks shall be allowed on the dates and times established by resolution adopted by the Governing Body for the observance of the July 4th holiday.
 - b. Prohibited Locations. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use any Fireworks:
 - i. within 1,000 feet of any hospital, sanitarium or infirmary; or
 - ii. within 100 feet of any Fireworks Stand; or
 - iii. within 50 feet of a motor vehicle fuel-dispensing station; or
 - iv. on any public property, including but not limited to roadways, sidewalks, paths, trails, greenways, parks and the right-of-way adjoining such property; or
 - v. on any private property without the express permission and direct supervision of the owner, occupier, or other Person having control of such property.
 - c. Throwing Prohibited. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any animal, person or groups of persons, or from, in the direction of or into any vehicle of any kind.
 - d. Prohibited Fireworks. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use Fireworks prohibited under the laws of the State of Kansas or under the laws of the United States.
 - e. Modification Prohibited. It shall be unlawful to alter, modify or enhance fireworks for use in a manner other than intended.
 2. Display Fireworks, 1.3G, UN0335 – 1.3G, UN0335 display fireworks, may lawfully be ignited, exploded, discharged or used within city limits as follows:
 - a. A permit shall be required for the discharge of display (1.3G, UN0335) fireworks and a fee in the amount of \$150.00 for such a permit shall be charged to the applicant. Application for such permit shall be made to the Business & Economic Development Department at least 30 days prior to the date for which the permit is requested.
 - b. The Business & Economic Development Department shall submit each application to Fire District 1 for their comments and/or recommendations.
 - c. The permit will be submitted to the Governing Body of the City of Gardner for formal action after receipt of the application. The Governing Body shall retain the privilege to waive the fee for the municipality or a non-profit organization.

- d. The individual(s), organization, municipality or landowner conducting the display fireworks exhibition shall maintain public liability and property damage insurance coverage, including spectator coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, and shall submit to the City as part of its permit application, a certificate of insurance.
 - e. The individual(s), organization, municipality or landowner submitting an application for the display fireworks exhibition shall provide a site plan of the exhibition site indicating the point of ignition of display (1.3G, UN0335) fireworks, the distance of any adjacent buildings, location of storage of display (1.3G, UN0335) fireworks and emergency ingress and egress to the property.
 - f. Display (1.3G, UN0335) fireworks shall be kept and stored, prior to firing in a place and manner that presents neither a hazard to any property nor a danger to any person, such as a warehouse or magazine or comparable depository that complies with the requirements of the current Bureau of Alcohol, Tobacco, firearms and explosives Federal Explosives law and Regulations, and the current Fire Code as adopted by the City of Gardner.
 - g. The discharge or display shall be arranged so that the display (1.3G, UN0335) fireworks are to be fired at least 100 feet from the nearest public right-of-way, person or building. Proximate fireworks may be fired within the distance limitations of NFPA 1126.
 - h. Display (1.3G, UN0335) fireworks that fire a projectile in the air shall be directed in such a manner that the projectile does not fire over or above any building, structure or person viewing the exhibition or display, and the angle of the projectile shall be no more than 15 degrees from vertical.
 - i. Persons firing display (1.3G, UN0335) fireworks shall be experienced pyrotechnic experts in the public exhibition or display of fireworks, shall be at least 21 years of age and shall possess a valid license as a Display Operator issued by the State Fire Marshall.
 - j. At least two approved fire extinguishers shall be present at the exhibition site.
 - k. All unfired display (1.3G, UN0335) fireworks and any residue remaining after the discharge shall be extinguished and shall be immediately disposed of in a nonflammable container.
- C. SALE OF FIREWORKS. It shall be unlawful to sell or otherwise distribute fireworks at a Fireworks Stand, except as follows:
- 1. Permits Required. The sale or other distribution of Fireworks at a Fireworks Stand shall not be done without obtaining and holding both a valid Short Term Special Use Permit and a Seasonal Fireworks Retailer Permit, issued by the Business and Economic Development Department.
 - 2. Date Limitations. The sale or distribution of Fireworks shall be allowed only on the following dates within the city limits: June 28, June 29, June 30, July 1, July 2, July 3, and July 4.
 - 3. Prohibited Fireworks. Sale or other distribution of Fireworks shall be limited to 1.4G, UN0336 (consumer) fireworks (formally known as Class "C" Fireworks) authorized under the laws of the State of Kansas.
 - 4. Appropriate Zoning. Fireworks Stands may only be located on, and permits may only be issued for, property as allowed by this city's zoning regulations as they exist on the date the permit is granted. As of (date of passage), Fireworks Stands are allowed only in zoning districts A, C-1, C-2, C-3, M-1 and M-2.
- D. PERMIT APPLICATION FOR FIREWORKS STAND. Applications for a Fireworks Stand permit shall be on forms and according to procedures prepared by the City's Business and Economic Development Department and shall be accompanied by a \$1000.00 application fee for each location from which Fireworks will be sold. Applications will not be made available or accepted before January 2nd of each year and must be received on or before the close of business on June 15th of that same year. If June 15th is a day on

which the City's offices are closed, the application must be received on or before the close of business on the last business day before June 15th. Submitted applications shall, at a minimum, contain the following information:

1. The name, address, legal description, phone number and written permission of the owner of the real estate upon which the Fireworks Stand is to be operated;
2. The name, address, and phone number of the Operator of the Fireworks Stand;
3. A site plan of the grounds on which the Fireworks Stand is to be located, showing the location of the Fireworks Stand; the location of all buildings, highways and any lines of communication; property lines, setbacks and adjoining structures; and the location of the off-street parking area designated for the Fireworks Stand;
4. If a sign will be used to advertise the Fireworks Stand, the diagram must show the location and size of the sign; and
5. The application shall contain a copy of the Operator's current Kansas Retailers' Sales Tax Registration Certificate. No permit shall be issued if the Fireworks Stand does not or will not comply with the provisions of this ordinance. In addition, the Business and Economic Development Department is authorized to deny a permit to an Operator who has previously failed to comply with this ordinance governing the sale of Fireworks and the operation of a Fireworks Stand.
6. The applicant must provide a current valid certificate of insurance reflecting a minimum of \$1,000,000 in Commercial General Liability coverage.

E. FIREWORKS STAND REQUIREMENTS. All Fireworks Stands shall be subject to and operate in compliance with the following minimum requirements:

1. Compliance with the Law. The tract of real estate on which the Fireworks Stand is located, and any and all buildings thereon (whether or not the buildings are actually used in connection with the Fireworks Stand), shall not have been found to be in violation of any of the City's zoning, site planning, building, plumbing, mechanical or electrical codes on or before the application for the permit is submitted. No permit shall be issued for a Fireworks Stand to be located on any real estate if any such violations have been determined on or before the application for the permit is submitted. In addition, any temporary or permanent structure used in connection with the Fireworks Stand shall comply with all applicable building codes relevant to the sale and storage of Fireworks, whether or not found to be in violation on or before the application for the permit is submitted. In addition, each Operator shall comply with all applicable local, state and federal laws and regulations, regardless of whether those legal requirements are specifically referenced herein. Without limiting the foregoing, all electrical systems and equipment, including temporary electrical connections, used in conjunction with the Fireworks Stand shall be installed and used in compliance with the National Electric Code (Article 590) or other applicable electric code, as then adopted and in force in this city.
2. Distance from Road and Residential Property. All Fireworks Stands shall be located at least 30 feet from any road rights-of-way or highway rights-of-way and 50 feet from residential zoned property.
3. Distance from Flammable Materials. No Fireworks shall be stored or sold within 50 feet of any source of flame, sparks, or more than one gallon of any explosive, flammable, combustible, or volatile material; provided, however, that the foregoing shall not apply to operable motor vehicles located more than 20 feet away from stored Fireworks or the Fireworks Stand.
4. Fireworks, Open Flames and Hot Objects. Fireworks, open flames and devices capable of igniting combustible materials shall not be used, discharged or exploded in or adjacent to any Fireworks Stand.
5. No Smoking/Alcoholic Beverages. Smoking and alcoholic beverages shall not be permitted within 100 feet of any Fireworks Stand or any adjacent areas where Fireworks are stored, sold or displayed. "FIREWORKS FOR SALE—NO SMOKING" signs shall be conspicuously posted inside and outside of the storage and/or sales location. The Operator shall enforce this provision with respect to all Persons at the

Fireworks Stand. Both the Operator and the Person violating this provision may be subject to prosecution pursuant to Section G (VIOLATIONS, ENFORCEMENT AND PENALTIES).

6. Use of Awnings, Canopies, Temporary Membrane Structures and Tents. The use of awnings, canopies, temporary membrane structures or tents shall, in addition to all other requirements, comply with the following requirements:
 - a. Location. No temporary membrane structure, canopy or tent shall be located within 30 feet of property lines, buildings, parked vehicles, internal combustion engines, other temporary membrane structures, tents, awnings, and/or canopies.
 - b. Flame-retardant Treatments. The sidewalls, drops, and tops of awnings, canopies, temporary membrane structures and tents shall be composed of flame-resistant material or shall be treated with a flame-retardant material.
7. Means of Egress.
 - a. Location of Exits. Exits shall be spaced at approximately equal intervals around the perimeter of the Fireworks Stand and shall be located such that all points are no more than 75 feet from an exit.
 - b. Number of Exits. Every Fireworks Stand shall have at least 2 exits or as determined in NFPA 101 Life Safety Code, whichever is greater.
 - c. Maintenance of Exits. The required width of exits, aisles and passageways to a public way shall not be less than 48 inches. Guide wires and other support members shall not cross a means of egress.
 - d. Exit Signs. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress.
8. Fire Extinguisher/Telephone. Each Fireworks Stand shall have at least 2 approved and operable fire extinguishers (2A10BC minimum) and telephone on site for emergencies at all times. The telephone requirement may be satisfied by maintaining an operable wireless phone on site.
9. Posting of Rules. Each Fireworks Stand shall display a sign provided by the city at each required exit, visible to the public, advising of the following rules:
 - a. Fireworks shall only be discharged on private property within this City. An adult owner, occupier, or person having control of the property must consent to the activity and provide direct supervision of the discharge of fireworks.
 - b. Fireworks shall not be discharged on any public property, including but not limited to roadways, sidewalks, paths, trails, parks, greenways and the right-of-way adjoining such property.
 - c. Fireworks may be discharged in this City during the dates and times established by resolution adopted by the Governing Body for the observance of the July 4th holiday.
 - d. No smoking or alcoholic beverages are allowed at the Fireworks Stand.
 - e. Violations are punishable by fines and/or confiscation of Fireworks.
10. Parking. Off street parking must be provided for all employees and customers, which shall be a minimum of 20 feet away from the Fireworks Stand and any Fireworks storage areas.
11. Site Preparation. Weeds and grass must be cut back a minimum of 100 feet from the Fireworks Stand.
12. Temporary Stand Removal. The temporary stand, signs and all debris on site shall be removed on or before July 6th.
13. Damage Deposit/Bond. Any Fireworks Stand which gains its principle means of ingress/egress by crossing either a public hike or bike path shall post a \$1,000 refundable bond or pay a \$1,000 deposit to ensure that the path is not damaged by the operation. The bond shall be made payable to the City of Gardner.
14. Advertising Sign. Only one advertising sign can be erected to advertise each Fireworks Stand, which may be illuminated but shall not be flashing. The sign cannot be larger than 32 sq. ft. and must be located in the front of the Fireworks Stand but not on the road or highway rights-of-way, and shall not represent a safety hazard. A temporary

- sign permit must be obtained from the Business and Economic Development Department before the sign is erected.
15. Sales Tax Registration Certificate. The Operator shall conspicuously display its current Kansas Retailers' Sales Tax Registration Certificate at the Fireworks Stand.
 16. Only Fireworks May be Sold. Unless applicable zoning regulations and approved site-plans allow the sale of other items at retail, only Fireworks related items may be sold at Fireworks Stands and sale of other items is strictly prohibited.
 17. Seasonal Fireworks Retailer Permit. The Operator shall conspicuously display its Seasonal Fireworks Retailer permit at the Fireworks Stand.
 18. Original Packaging. All Fireworks shall remain in original packaging, unless otherwise permitted pursuant to regulations of the Kansas Fire Marshall.
- F. INSPECTIONS OF FIREWORKS STANDS; REVOCATION OF PERMIT. One or more inspections of the proposed site for the Fireworks Stand may be required to ensure compliance with this Section prior to or after issuing the permit. Inspections may be made by any Gardner, Kansas law enforcement officer, any member of the City's Business and Economic Development Department, or personnel of Fire District 1. By submitting any application for a Fireworks Stand permit, the applicant shall be deemed to have consented to all such inspections. If the applicant does not own the subject property, the filing of an application shall be deemed to be a representation by the applicant that the applicant has permission of the owner of the land that the applicant is authorized to consent to such inspection. Any permit previously issued may be revoked or suspended upon notice to the Operator if the Fireworks Stand is not operating in compliance with the provisions of this Section. Upon revocation or suspension of the permit, the Operator of the Fireworks Stand shall immediately cease sale of all Fireworks until the Fireworks Stand is brought into compliance and the permit is reinstated.
- G. VIOLATIONS, ENFORCEMENT AND PENALTIES.
1. Criminal Penalties. Any Person who violates the provisions of this Section shall be guilty of an unclassified misdemeanor, punishable by a fine in an amount not to exceed \$500, confinement in the county jail for a period not to exceed one month, or both.
 2. Initiation of Proceedings. In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of this Section by making an offense report and serving a uniform complaint and notice to appear upon the accused. The offense report may be forwarded to the city prosecutor for prosecution.
 3. Continuing Violation. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.
 4. Confiscation of Fireworks. In addition to the other provisions of this Section, whenever a Gardner law enforcement officer, code enforcement officer, or personnel of Fire District 1 has probable cause to believe that a person possesses Fireworks with intent to violate the provisions of this Section or has violated the provisions of this Section, the law enforcement officer, code enforcement officer or personnel of the fire department may confiscate Fireworks from such person and arrange for their immediate destruction in a manner approved by the Fire Chief.
- H. BURNING BAN. The use or discharge of all fireworks shall be prohibited whenever a fire or burn ban is put in effect by the Governor, Mayor, Fire Chief or Johnson County Emergency Manager. The Mayor may also suspend the sale of fireworks while the ban is in effect. If sales are suspended, permit fees for Firework Stands shall be refunded on a prorated basis to the permit applicants.

- I. PARTIAL INVALIDITY. If any provision of this Section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.
- J. JURISDICTION. The provisions of this Article shall apply to the city limits of Gardner, Kansas."

11.20 PROHIBITION OF SEX BOOKSTORES, COIN-OPERATED MOTION PICTURE DEVICES SHOWING SEX MOVIES AND EATING OR DRINKING ESTABLISHMENTS FEATURING NUDE DANCERS OR SIMILAR ENTERTAINMENT.

- (a) Purpose and Intent. It is declared to be the purpose and intent of this section to protect the public health, safety, welfare and morals of the community to promote the stability of property values and impose restrictions upon those activities which pander to gross sexuality in a manner that would detract from the neighborhood, adversely affect the property values, increase crime and violence, and be repugnant to the morals of the community. In recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this section to inhibit freedom of speech or the press, but rather to deter those of low morals from imposing their lack of morals upon the rest of the community; and further recognizing that those parts of a community, which become centers of loose moral conduct, frequently become places of rowdiness, criminality and indecent behavior. It is further the belief that just as advertising is designed to stimulate one's appetite for desiring goods or a service, an over-abundance of preoccupation with sexual displays or material arouses the appetites of those so preoccupied and encourages violations of the criminal statutes involving sexual offenses and is contrary to the health, safety and welfare of the community.
- (b) Definitions.
 - (1) For the purpose of this section, "specified sexual activities" is defined as:
 - (A) Human genitals in a state of sexual stimulation or arousal;
 - (B) Acts of human masturbation, sexual intercourse or sodomy.
 - (C) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
 - (2) For the purposes of this section, "specified anatomical areas", is defined as:
 - (A) Less than completely and opaquely covered:
 - (.1) Human genitals, pubic region,
 - (.2) Buttock, and
 - (.3) Female breast below a point immediately above the top of the areola; and
 - (B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
 - (3) For the purpose of this section, "eating or drinking establishments" are defined as: any premises which may be open to the general public in which any food as

defined by K.S.A. 36-501 or any beverage is sold, distributed or consumed or any premises operated for profit by a corporation, partnership or individual, to which members of such establishment may resort for the consumption of food or any beverage and/or for entertainment.

- (4) Book sales. No person firm or corporation shall establish any bookstore or book department of a store in which a substantial or significant portion of its stock in trade is in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
- (5) Mini-motion picture displays - No person, firm or corporation shall show, present or offer for viewing, for money consideration, movie or video films or pictures or other materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as herein defined, for observation by patrons therein.
- (6) Eating or drinking establishments. No person, firm or corporation shall feature or permit dancers or any other employee or persons to be engaged in specified sexual activities or to expose to view or display specified anatomical areas.
- (7) Any person, firm or corporation violating any provision of this section shall be guilty of a Class A Public Offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues."

9.05.040. DELETIONS FROM THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES. The following deletion from the Uniform Public Offense Code for Kansas Cities is hereby made:

Section 10.13 is deleted in its entirety.

9.05.050. INVALIDITY IN PART. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this chapter.

9.05.060 VIOLATIONS AND PENALTIES. That any person firm or corporation who shall violate any of the provisions of this chapter, shall, upon conviction thereof, be fined or imprisoned as provided in Article 12 of said standard code incorporated herein by reference.

9.05.070 CONFLICTING ORDINANCES. Where this chapter conflicts with any other state or federal ordinance, statute or regulation, the most restrictive ordinance, statute or regulation shall apply. All local ordinances, or parts of local ordinance, in conflict herewith be and the same are hereby repealed.

SECTION THREE: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

{The remainder of this page left intentionally blank}

SECTION FOUR: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication as provided by law.

PASSED and APPROVED this 19th day of October, 2020.

(SEAL)

CITY OF GARDNER, KANSAS

Steve Shute, Mayor

Attest:

Sharon Rose, City Clerk

Approved as to form:

Ryan B. Denk, City Attorney

COUNCIL ACTION FORM

NEW BUSINESS ITEM NO. 4

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Agenda Item: Consider adopting a resolution amending Resolution No. 1976 of the City of Gardner, Kansas, to authorize an increase in the cost of improvements to certain main trafficways and trafficway connections financed through the issuance of General Obligation Bonds of the City, all pursuant to K.S.A. 12-685 *et seq.*

Strategic Priority: Promote Economic Development, Infrastructure and Asset Management, Fiscal Stewardship

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution amending Resolution No. 1976 of the City of Gardner, Kansas, to authorize an increase in the cost of improvements to certain main trafficways and trafficway connections financed through the issuance of General Obligation Bonds, all pursuant to K.S.A. 12-685 *et seq.*

Background/Description of Item:

Previously at this October 16, 2017 Council meeting, Council approved Resolution No. 1976 authorizing the issuance of General Obligation Bonds of the City to pay the costs of certain trafficway and trafficway connection improvements as a part of the I-35 and Gardner Road Project. Resolution No. 1976 authorized the issuance of \$3,040,000 in General Obligation Bonds to finance the improvements.

Cost estimates have changed since 2017 and now the City finds it necessary to amend Resolution No. 1976 to increase the authorized amount for the project. Although the City will receive funding from KDOT and MARC for the project (currently anticipated up to \$3.925 million), the City's estimated share of approximately \$3.477 million (plus estimated costs of issuance which is the "not to exceed \$3,565,000" noted in the proposed resolution) will be financed by General Obligation Bonds.

Financial Impact:

The City plans to issue G.O. Bonds in the amount of \$3,565,000 to finance its portion of the project. Annual debt service will be paid from the Special Highway Fund.

Attachments:

- Resolution No. 2064

Suggested Motion:

Adopt Resolution No. 2064, a resolution amending Resolution No. 1976 of the City of Gardner, Kansas, to authorize an increase in the cost of improvements to certain main trafficways and trafficway connections financed through the issuance of General Obligation Bonds of the City, all pursuant to K.S.A. 12-685 *et seq.*

RESOLUTION NO. 2064

A RESOLUTION AMENDING RESOLUTION NO. 1976 OF THE CITY OF GARDNER, KANSAS, TO AUTHORIZE AN INCREASE IN THE COST OF IMPROVEMENTS TO CERTAIN MAIN TRAFFICWAYS AND TRAFFICWAY CONNECTIONS FINANCED THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY, ALL PURSUANT TO K.S.A. 12-685 *ET SEQ.*

WHEREAS, pursuant Resolution No. 1976 of the City of Gardner, Kansas (the “City”), adopted on October 16, 2017, the Governing Body of the City authorized the design and construction of certain improvements to the interchange at Interstate 35, Center Street, and 191st Street within the City (collectively, the “Main Trafficway Improvements”), under the authority of K.S.A. 12-685 *et seq.*, as amended (the “Act”);

WHEREAS, pursuant to Resolution No. 1976, the Governing Body of the City further authorized that costs of the Main Trafficway Improvements in an amount not to exceed \$3,040,000 be financed through the issuance of general obligation bonds of the City, with the balance of the costs of such improvements paid from other available funds; and

WHEREAS, the estimated costs of the Main Trafficway Improvements have increased, and the Governing Body of the City now finds it necessary and desirable to amend Resolution No. 1976 to increase the costs of such improvements which are authorized to be financed through the issuance of general obligation bonds of the City to an amount not to exceed \$3,565,000, with the balance of such costs paid from other available funds of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDNER, KANSAS:

Section 1. Pursuant to the Act, Resolution No. 1976 of the City is hereby amended by replacing the fourth recital paragraph thereof in its entirety with the following:

WHEREAS, it is necessary and desirable to pay a portion of the cost of the Main Trafficway Improvements in an amount not to exceed \$3,565,000 through the issuance of general obligation bonds of the City, with the balance of the cost of such improvements paid from other available funds;

Section 2. Pursuant to the Act, Resolution No. 1976 of the City is further amended by replacing Section 2 thereof in its entirety with the following:

Section 2. For the purpose of providing funds to pay a portion of the costs of the Main Trafficway Improvements, the City authorizes the issuance of its general obligation bonds in an aggregate amount not to exceed \$3,565,000 pursuant to the Act.

Section 3. This Resolution shall be in full force and effect from and after its adoption by the Governing Body of the City.

ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 19, 2020.

CITY OF GARDNER, KANSAS

By _____
Mayor

(Seal)

Attest:

City Clerk

COUNCIL ACTION FORM

NEW BUSINESS AGENDA ITEM NO. 5

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: MATTHEW WOLFF, CPFO, FINANCE DIRECTOR

Discussion Item: Consider a petition for the formation of a benefit district for offsite sanitary sewer improvements and 167th street improvements for the Hilltop Ridge development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge Phase One Off-site Sanitary Sewer and 167th Street Special Benefit District)

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life, Infrastructure and Asset Management

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution determining the advisability of offsite sanitary sewer improvements and 167th Street improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge Offsite Sanitary Sewer and 167th Street Special Benefit District).

Background/Description of Item:

The developer/property owner for the proposed Hilltop Ridge residential development has petitioned the City for the creation of a Special Benefit District for construction of offsite sanitary sewer improvements and 167th Street improvements.

Hilltop Ridge is a multi-phase residential development that at full build out will contain 150 single-family lots. The construction of the first phase includes 31 single-family lots.

To help mitigate risk to the City, the developer is providing an irrevocable letter of credit in the amount of \$160,000. The letter of credit will expire after the completion of residences on all 31 lots within the Hilltop Ridge First Plat. The City can draw on all or part of the total amount of credit in the event of a delinquency in the payment of special assessments for the project.

The maximum cost of the improvements for the improvement district is \$1,010,000, including the costs of issuance for temporary notes and long-term bonds and the interest expense on temporary notes. The cost of the improvements will be assessed one-hundred percent (100%) against the improvement district and zero percent (0%) to be paid by the City at large. The proposed term of the improvement district is 20 years.

Attachments:

- Petition for Hilltop Ridge Offsite Sewer and 167th Street Special Benefit District
- Resolution No. 2065

Suggested Motion:

Adopt Resolution No. 2065, determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge Phase One Off-site Sanitary Sewer and 167th Street Special Benefit District)

CITY OF GARDNER, KANSAS

**PETITION FOR CREATION OF AN IMPROVEMENT DISTRICT FOR
CONSTRUCTION OF SANITARY SEWER AND ROADWAY
IMPROVEMENTS WITHIN THE CITY.**

To: The City of Gardner, Kansas (the “City”)

The undersigned, being the owner(s) of record of 100% of the property liable to be assessed and being willing to pay the costs thereof for the following described proposed improvements, do(es) hereby petition that such improvements be made in the manner provided by K.S.A. 12-6a01 *et seq.*, and amendments thereto:

GENERAL NATURE OF THE IMPROVEMENTS. The general nature of the improvements is the construction of 12” Diameter Sanitary Main extension approximately 1,900 L.F. from approximately 1,500 L.F north of 167th Street to 300 L.F. south of 167th. The project includes a 100 foot bore under 167th Street and, widening of 167th Street and constructing an eastbound left turn lane onto northbound Kill Creek Road. (collectively, the “Improvements”).

1. **MAXIMUM ESTIMATED COST.** The maximum estimated cost of the Improvements is One Million Ten Thousand Dollars (\$1,010,000).

2. **BOUNDARIES OF THE IMPROVEMENT DISTRICT.** The boundaries of the proposed improvement district to be assessed (the “Improvement District”) shall include the land described on **Exhibit A** attached hereto and incorporated herein.

3. **METHOD OF ASSESSMENT.** The method of assessment is equally per square foot for platted residential properties included in the Improvement District and excluding public right-of-way, public parks, storm water retention or detention areas, association common areas, and publicly owned easements or similar areas not owned by individual residents. More specifically, One Hundred and 0/10 percent (100.0%) of the costs of the Improvements shall be assessed against the Improvement District. In the event proposed parcels in the Improvement District are subdivided into smaller parcels, the assessments against such smaller parcels shall be relieved or respread based on the square footage of each such smaller parcel relative to the square footage of the parent tract.

4. **APPORTIONMENT OF COST.** The apportionment of costs between the Improvement District and the City-at-large shall be one hundred percent (100%) against the Improvement District, said assessments to be levied over a twenty (20) year period, and zero percent (0%) against the City-at-large.

5. **STATEMENT BY SIGNERS.** The owner acknowledges that:

A. This petition (the “Petition”) is submitted pursuant to subsection (c) of K.S.A. 12-6a04 and amendments thereto;

- B. The proposed Improvement District does not include all properties which may be deemed to benefit from the proposed Improvements; and
- C. The name of the undersigned may not be withdrawn from this Petition by the undersigned after the Governing Body commences consideration of the Petition or later than seven (7) days after the filing of the Petition with the City Clerk, whichever occurs first.

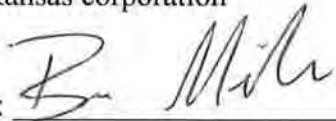
6. **IMPROVEMENTS MADE WITHOUT NOTICE.** The undersigned request(s) that the Governing Body of the City consider a resolution authorizing the Improvements without notice and hearing as provided by K.S.A. 12-6a04(c)(7), as amended.

7. **CERTIFICATE AS TO OWNERSHIP OF LAND.** The undersigned do(es) hereby certify and warrant that it is the owner of all land set forth in **Exhibit B** as comprising the Improvement District. Each person identified as signing in a representative capacity shall be deemed to and does hereby personally, and in his individual capacity, certify, represent and warrant that he has the authority to sign this petition on behalf of and to legally bind the named owner of the land. The undersigned acknowledge that the signer has signed this Petition and caused it to be filed with the City for the purpose of inducing the City to create the Improvement District and levy special assessments on the land as herein provided and that if the City does so, it will be acting in reliance on the representations and actions of the undersigned. The undersigned in both his individual capacity and in any representative capacity further agrees jointly and severally to indemnify and hold the City harmless from any costs or expenses including attorneys' fees incurred as the result of any claim or assertion by any person or entity that any assessment levied pursuant to this Petition is invalid and in the event any assessment against any tract of land is determined to be invalid for any reason, then the undersigned consents that the amount of any such invalid assessment may be relieved or respread against the remainder of the land described in **Section 3** hereof.

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IN WITNESS WHEREOF, the undersigned have hereunto affixed their signature.


SUNRISE INVESTMENTS CORPORATION,
a Kansas corporation

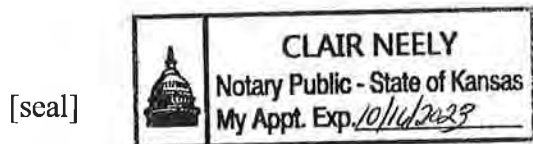
By: 
Name: Patrick B. Miller
Title: Owner

STATE OF Kansas)
) SS.
COUNTY OF Johnson)

BE IT REMEMBERED, that on this ____ day of October, 2020, before me, the undersigned Notary Public, in and for said County and State, personally appeared Patrick B. Miller, to me personally known and who, by me duly sworn, did state that (s)he is Owner of Sunrise Investments Corporation, a Kansas corporation, and that said instrument was signed on behalf of said corporation, and said Owner, acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.


Notary Public



My Commission Expires:

10/16/2023

THIS PETITION was filed in the office of the City Clerk of the City of Gardner, Kansas, on this ____ day of _____, 20__.

Amy Nasta
Sharon Rose, City Clerk

EXHIBIT A

BOUNDARIES OF IMPROVEMENT DISTRICT

Hilltop Ridge Preliminary Plat

All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

County Tax Parcel ID: CF221 422-1003

RESOLUTION NO. 2065

A RESOLUTION DETERMINING THE ADVISABILITY OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF GARDNER, KANSAS, AND AUTHORIZING AND PROVIDING FOR THE MAKING OF SUCH IMPROVEMENTS IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY AND K.S.A. 12-6a01 *ET SEQ.* (HILLTOP RIDGE PHASE ONE OFFSITE SANITARY SEWER AND 167TH STREET SPECIAL BENEFIT DISTRICT).

WHEREAS, K.S.A. 12-6a02 authorizes the governing body of any city to make or cause to be made municipal works or improvements which confer a special benefit upon property within a definable area of the city and to levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvements for special benefits conferred upon such property by any such improvements and to provide for the payment of all or any part of the costs of the improvements with the proceeds of such special assessments;

WHEREAS, a petition, executed by 100% of the owners of property within the proposed improvement district, has been filed with the City Clerk of the City of Gardner, Kansas (the "City"), requesting certain improvements be made in accordance with K.S.A. 12-6a01 *et seq.*;

WHEREAS, K.S.A. 12-6a04(d) provides that upon receipt of a petition filed with the City Clerk in accordance with K.S.A. 12-6a04(c), the Governing Body of the City may (a) make findings by resolution as to the advisability of the improvements requested in the petition, the nature of the improvements, the estimated cost, the boundaries of the improvement district, the method of assessment and apportionment of cost, if any, between the improvement district and the city-at-large and (b) order the improvements without notice or public hearing; and

WHEREAS, the Governing Body finds it necessary to make its final findings by resolution as to the advisability of the proposed improvements and finds and determines it necessary to authorize the improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION 1. The Governing Body finds and finally determines that:

(a) It is advisable to make the following improvements:

construction of 12" diameter sanitary main extension approximately 1,900 L.F. from approximately 1,500 L.F. north of 167th Street to 300 L.F. south of 167th Street, including a 100 foot bore under 167th Street, widening of 167th Street, constructing an eastbound left turn lane onto northbound Kill Creek Road, and all related appurtenances.

(b) The maximum estimated or probable cost of the proposed improvements is: \$1,010,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(c) The boundaries of the proposed improvement district are as described on the attached *Exhibit A*.

(d) The method of assessment is: the costs of the improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not owned by individual residents. In the event parcels within the improvement district are subdivided into smaller parcels, the assessments against such smaller parcels shall be relieved or respread based on the square footage of each such smaller parcel relative to the square footage of the parent tract.

(e) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: 100% to be assessed against the improvement district and 0% to be paid by the city-at-large.

(f) The improvement district does not include all the property which may be deemed to be benefited by the proposed improvements.

(g) The persons or entities who signed the petition are willing to pay the costs of the proposed improvements as set forth in the petition.

SECTION 2. The improvements are authorized and ordered to be made in accordance with the findings of the Governing Body as set forth in Section 1 of this Resolution. General obligation bonds or notes are authorized to be issued in an aggregate amount not exceeding the estimated cost of the improvements, and the proceeds from such notes or bonds may be used to reimburse expenditures made by the City 60 days before and during the time after the date of this Resolution in accordance with United States Treasury Regulation 1.150-2.

SECTION 3. This Resolution shall be published one time in the official City newspaper and shall also be filed of record in the office of the Register of Deeds of Johnson County, Kansas.

[remainder of page left blank intentionally]

ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 19, 2020.

CITY OF GARDNER, KANSAS

(Seal)

Mayor

ATTEST:

City Clerk

EXHIBIT A

BOUNDARIES OF PROPOSED IMPROVEMENT DISTRICT

All that part of the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 55 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 652.13 feet to the point of beginning; thence South 1 degree 43 minutes 05 seconds East, a distance of 142.44 feet; thence South 54 degrees 07 minutes 26 seconds West, a distance of 247.56 feet; thence South 17 degrees 40 minutes 26 seconds West, a distance of 899.98 feet; thence South 25 degrees 28 minutes 37 seconds West, a distance of 300.35 feet to a point on the West line of the Northwest Quarter of said Section 22; thence South 2 degrees 10 minutes 37 seconds East, along the West line of the Northwest Quarter of said Section 22, a distance of 1271.06 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 88 degrees 16 minutes 13 seconds East, along the South line of the Northwest Quarter of said Section 22, a distance of 1329.32 feet to the Southeast corner of the West half of the Northwest Quarter of said Section 22; thence North 2 degrees 22 minutes 27 seconds West, along the East line of the West Half of the Northwest Quarter of said Section 22, a distance of 2668.43 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 88 degrees 16 minutes 55 seconds West, along the North line of the Northwest Quarter of said Section 22, a distance of 668.00 feet to the point of beginning, containing 71.15 acres, more or less.

County Tax Parcel ID: CF221422-1003

COUNCIL ACTION FORM

NEW BUSINESS AGENDA ITEM NO. 6

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Discussion Item: Consider a petition for the formation of a benefit district for certain internal site improvements for the first plat of the Hilltop Ridge development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge First Phase Street Special Benefit District).

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life, Infrastructure and Asset Management

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution determining the advisability of certain internal site improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Hilltop Ridge First Phase Special Benefit District).

Background/Description of Item:

The developer/property owner for the proposed Hilltop Ridge residential development has petitioned the City for the creation of a Special Benefit District for onsite sewer and stormwater improvements.

Hilltop Ridge is a multi-phase residential development that at full build out will contain 150 single-family lots. The construction of the first phase includes 31 single-family lots.

To help mitigate risk to the City, the developer is providing an irrevocable letter of credit in the amount of \$160,000. The letter of credit will expire after the completion of residences on the 31 lots within the Hilltop Ridge First Plat. The City can draw on all or part of the total amount of credit in the event of a delinquency in the payment of special assessments for the project.

The maximum cost of the improvements for the improvement district is \$500,000, including the costs of issuance for temporary notes and long-term bonds and the interest expense on temporary notes. The cost of the improvements will be assessed one-hundred percent (100%) against the improvement district and zero percent (0%) to be paid by the City at large. The proposed term of the improvement district is 20 years.

Attachments:

- Petition for Hilltop Ridge First Plat Special Benefit District
- Resolution No. 2066

Suggested Motion:

Adopt Resolution No. 2066, a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 *et seq.* (Hilltop Ridge Phase One First Plat Internal Improvements Special Benefit District).

CITY OF GARDNER, KANSAS

**PETITION FOR CREATION OF AN IMPROVEMENT DISTRICT FOR
CONSTRUCTION OF SANITARY AND STORM SEWER
INFRASTRUCTURE WITHIN THE CITY.**

To: The City of Gardner, Kansas (the “City”)

The undersigned, being the owner(s) of record of 100% of the property liable to be assessed and being willing to pay the costs thereof for the following described proposed improvements, do(es) hereby petition that such improvements be made in the manner provided by K.S.A. 12-6a01 *et seq.*, and amendments thereto:

1. **GENERAL NATURE OF THE IMPROVEMENTS.** The general nature of the improvements is the construction of public sanitary and storm sewer to service the 1st Plat of Hilltop Ridge Subdivision comprised of 31 Lots (collectively, the “Improvements”).

2. **MAXIMUM ESTIMATED COST.** The maximum estimated cost of the Improvements is Five Hundred Thousand Dollars (\$500,000).

3. **BOUNDARIES OF THE IMPROVEMENT DISTRICT.** The boundaries of the proposed improvement district to be assessed (the “Improvement District”) shall include the land described on **Exhibit A** attached hereto and incorporated herein.

4. **METHOD OF ASSESSMENT.** The method of assessment is equally per square foot for platted residential properties included in the Improvement District and excluding public right-of-way, public parks, storm water retention or detention areas, association common areas, and publicly owned easements or similar areas not owned by individual residents. More specifically, One Hundred and 0/10 percent (100.0%) of the costs of the Improvements shall be assessed against the Improvement District. In the event the parcels in the Improvement District are subdivided into smaller parcels, the assessments against such smaller parcels shall be relieved or respread based on the square footage of each such smaller parcel relative to the square footage of the parent tract.

5. **APPORTIONMENT OF COST.** The apportionment of costs between the Improvement District and the City-at-large shall be one hundred percent (100%) against the Improvement District, said assessments to be levied over a twenty (20) year period, and zero percent (0%) against the City-at-large.

6. **STATEMENT BY SIGNERS.** The owner acknowledges that:

A. This petition (the “Petition”) is submitted pursuant to subsection (c) of K.S.A. 12-6a04 and amendments thereto;

- B. The proposed Improvement District does not include all properties which may be deemed to benefit from the proposed Improvements; and
- C. The name of the undersigned may not be withdrawn from this Petition by the undersigned after the Governing Body commences consideration of the Petition or later than seven (7) days after the filing of the Petition with the City Clerk, whichever occurs first.

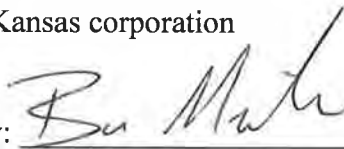
7. **IMPROVEMENTS MADE WITHOUT NOTICE.** The undersigned request(s) that the Governing Body of the City consider a resolution authorizing the Improvements without notice and hearing as provided by K.S.A. 12-6a04(c)(7), as amended.

8. **CERTIFICATE AS TO OWNERSHIP OF LAND.** The undersigned do(es) hereby certify and warrant that it is the owner of all land set forth in **Exhibit B** as comprising the Improvement District. Each person identified as signing in a representative capacity shall be deemed to and does hereby personally, and in his individual capacity, certify, represent and warrant that he has the authority to sign this petition on behalf of and to legally bind the named owner of the land. The undersigned acknowledge that the signer has signed this Petition and caused it to be filed with the City for the purpose of inducing the City to create the Improvement District and levy special assessments on the land as herein provided and that if the City does so, it will be acting in reliance on the representations and actions of the undersigned. The undersigned in both his individual capacity and in any representative capacity further agrees jointly and severally to indemnify and hold the City harmless from any costs or expenses including attorneys' fees incurred as the result of any claim or assertion by any person or entity that any assessment levied pursuant to this Petition is invalid and in the event any assessment against any tract of land is determined to be invalid for any reason, then the undersigned consents that the amount of any such invalid assessment may be relieved or respread against the remainder of the land described in **Section 3** hereof.

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IN WITNESS WHEREOF, the undersigned have hereunto affixed their signature.

SUNRISE INVESTMENTS CORPORATION,
a Kansas corporation

By: 
Name: Patrick B. Miller
Title: Owner

STATE OF Kansas)
COUNTY OF Johnson) SS.

BE IT REMEMBERED, that on this ____ day of October, 2020, before me, the undersigned Notary Public, in and for said County and State, personally appeared Patrick B. Miller, to me personally known and who, by me duly sworn, did state that (s)he is Owner of Sunrise Investments Corporation, a Kansas corporation, and that said instrument was signed on behalf of said corporation, and said Owner, acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.




Notary Public

[seal]

My Commission Expires:

10/16/2023

THIS PETITION was filed in the office of the City Clerk of the City of Gardner, Kansas, on this ____ day of _____, 20__.

Amy Nasta Sharon Rose, City Clerk

EXHIBIT A

BOUNDARIES OF IMPROVEMENT DISTRICT

Hilltop Ridge 1st Plat

All that part of Tract "B", as shown on Survey recorded in Book 201910, Page 002932, in the Office of the Register of Deeds, Johnson County, Kansas, lying in the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88°16'55" East, along the North line of said Northwest Quarter, a distance of 652.13 feet to the Point of Beginning; thence continuing North 88°16'55" East, along said North line, a distance of 668.00 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 02°22'27" East, along the East line of West Half of the Northwest Quarter of said Section 22, a distance of 934.42 feet; thence departing said East line, South 87°37'33" West a distance of 262.67 feet; thence North 25°44'33" West a distance of 53.00 feet; thence South 87°37'33" West a distance of 150.22 feet; thence northerly along a non-tangent curve to the right having a radius of 275.00 feet, and a chord which bears North 12°02'46" West, 21.95 feet, for an arc length of 21.96 feet; thence South 80°14'29" West a distance of 193.89 feet; thence North 02°22'27" West a distance of 86.70 feet; thence North 18°41'48" West a distance of 75.02 feet; thence South 87°37'33" West a distance of 218.92 feet; thence North 72°19'34" West a distance of 163.08 feet to a point on the East line of Tract "A", as shown on said recorded Survey; thence along said East line, the following three courses: thence North 17°40'26" East a distance of 429.01 feet; thence North 54°07'26" East a distance of 247.56 feet; thence North 01°43'05" West a distance of 142.44 feet to the Point of Beginning, containing 744,036 square feet, or 17.081 acres, more or less.

RESOLUTION NO. 2066

A RESOLUTION DETERMINING THE ADVISABILITY OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF GARDNER, KANSAS, AND AUTHORIZING AND PROVIDING FOR THE MAKING OF SUCH IMPROVEMENTS IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY AND K.S.A. 12-6a01 *ET SEQ.* (HILLTOP RIDGE PHASE ONE FIRST PLAT INTERNAL IMPROVEMENTS SPECIAL BENEFIT DISTRICT).

WHEREAS, K.S.A. 12-6a02 authorizes the governing body of any city to make or cause to be made municipal works or improvements which confer a special benefit upon property within a definable area of the city and to levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvements for special benefits conferred upon such property by any such improvements and to provide for the payment of all or any part of the costs of the improvements with the proceeds of such special assessments;

WHEREAS, a petition, executed by 100% of the owners of property within the proposed improvement district, has been filed with the City Clerk of the City of Gardner, Kansas (the "City"), requesting certain improvements be made in accordance with K.S.A. 12-6a01 *et seq.*;

WHEREAS, K.S.A. 12-6a04(d) provides that upon receipt of a petition filed with the City Clerk in accordance with K.S.A. 12-6a04(c), the Governing Body of the City may (a) make findings by resolution as to the advisability of the improvements requested in the petition, the nature of the improvements, the estimated cost, the boundaries of the improvement district, the method of assessment and apportionment of cost, if any, between the improvement district and the city-at-large and (b) order the improvements without notice or public hearing; and

WHEREAS, the Governing Body finds it necessary to make its final findings by resolution as to the advisability of the proposed improvements and finds and determines it necessary to authorize the improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION 1. The Governing Body finds and finally determines that:

(a) It is advisable to make the following improvements:

construction of public sanitary and storm sewer improvements and all related appurtenances.

(b) The maximum estimated or probable cost of the proposed improvements is: \$500,000, including the costs of issuance of temporary notes and long-term bonds and the interest expense on temporary notes.

(c) The boundaries of the proposed improvement district are as described on the attached *Exhibit A*.

(d) The method of assessment is: the costs of the improvements shall be assessed against all of the property in the improvement district equally per square foot excluding those areas dedicated as public right of way, public parks, storm water retention or detention areas, association common areas, publicly owned easements or similar areas not owned by individual residents. In the event parcels within the improvement district are subdivided into smaller parcels, the assessments against such smaller parcels shall be relieved or respread based on the square footage of each such smaller parcel relative to the square footage of the parent tract.

(e) The apportionment of the cost of the improvements, between the improvement district and the city-at-large, is: 100% to be assessed against the improvement district and 0% to be paid by the city-at-large.

(f) The improvement district does not include all the property which may be deemed to be benefited by the proposed improvements.

(g) The persons or entities who signed the petition are willing to pay the costs of the proposed improvements as set forth in the petition.

SECTION 2. The improvements are authorized and ordered to be made in accordance with the findings of the Governing Body as set forth in Section 1 of this Resolution. General obligation bonds or notes are authorized to be issued in an aggregate amount not exceeding the estimated cost of the improvements, and the proceeds from such notes or bonds may be used to reimburse expenditures made by the City 60 days before and during the time after the date of this Resolution in accordance with United States Treasury Regulation 1.150-2.

SECTION 3. This Resolution shall be published one time in the official City newspaper and shall also be filed of record in the office of the Register of Deeds of Johnson County, Kansas.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 19, 2020.

CITY OF GARDNER, KANSAS

(Seal)

Mayor

ATTEST:

City Clerk

EXHIBIT A

BOUNDARIES OF PROPOSED IMPROVEMENT DISTRICT

All that part of Tract "B", as shown on Survey recorded in Book 201910, Page 002932, in the Office of the Register of Deeds, Johnson County, Kansas, lying in the West Half of the Northwest Quarter of Section 22, Township 14 South, Range 22 East, in the City of Gardner, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 22; thence North 88°16'55" East, along the North line of said Northwest Quarter, a distance of 652.13 feet to the Point of Beginning; thence continuing North 88°16'55" East, along said North line, a distance of 668.00 feet to the Northeast corner of the West Half of the Northwest Quarter of said Section 22; thence South 02°22'27" East, along the East line of West Half of the Northwest Quarter of said Section 22, a distance of 934.42 feet; thence departing said East line, South 87°37'33" West a distance of 262.67 feet; thence North 25°44'33" West a distance of 53.00 feet; thence South 87°37'33" West a distance of 150.22 feet; thence northerly along a non-tangent curve to the right having a radius of 275.00 feet, and a chord which bears North 12°02'46" West, 21.95 feet, for an arc length of 21.96 feet; thence South 80°14'29" West a distance of 193.89 feet; thence North 02°22'27" West a distance of 86.70 feet; thence North 18°41'48" West a distance of 75.02 feet; thence South 87°37'33" West a distance of 218.92 feet; thence North 72°19'34" West a distance of 163.08 feet to a point on the East line of Tract "A", as shown on said recorded Survey; thence along said East line, the following three courses: thence North 17°40'26" East a distance of 429.01 feet; thence North 54°07'26" East a distance of 247.56 feet; thence North 01°43'05" West a distance of 142.44 feet to the Point of Beginning, containing 744,036 square feet, or 17.081 acres, more or less.

COUNCIL ACTION FORM

NEW BUSINESS AGENDA ITEM NO. 7

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Agenda Item: Consider adopting a resolution authorizing the public sale of certain General Obligation Bonds and Notes of the City of Gardner, Kansas

Strategic Priority: Fiscal Stewardship

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution authorizing the public sale of approximately \$5,205,000 principal amount of General Obligation Bonds and approximately \$5,280,000 of principal amount of General Obligation Temporary Notes of the City of Gardner, Kansas.

Background/Description of Item:

The City has scheduled to sell approximately \$5,205,000 principal amount of General Obligation Bonds and approximately \$5,280,000 of principal amount of General Obligation Temporary Notes on November 16, 2020, at 11:00 a.m.

The attached bond and temporary note sale documents prepared by Municipal Advisor Kimmel include the estimated costs of issuance and debt service schedules for I-35 and Gardner Road improvements, current refunding of 2010A bonds, Hilltop Special Benefit District, and current refunding of 2019A Notes (Tuscan Farm Special Benefit District). Council will note that the term of the bonds/repayment period is 10 years.

I-35 and Gardner Road

At the October 16, 2017 meeting, Council approved Resolution No. 1976 authorizing the issuance of General Obligation Bonds to pay the cost to construct improvements to certain main traffic ways and traffic way connections (I-35 and Gardner Rd. Project) of the City of Gardner, Kansas. On October 19, 2020, the Council approved Resolution No. 2064 increasing the not to exceed amount from \$3,040,000 to \$3,565,000.

2010A Bonds Refunding

As noted in the attached Ehlers pre-sale report prepared by Municipal Advisor Kimmel, because of the significant reduction in current interest rates vs the original interest rates for the existing 2010A bonds, it is advantageous for the City to refund the callable Series 2010A bonds to achieve an estimated \$132,200 in future interest cost savings.

It should be noted that the estimated net present value (NPV) benefit of the recommended refunding option is estimated at 6.85% of the refunded debt, exceeding the Government Finance Officers Association (GFOA) recommended best practice of achieving a NPV savings of 3-5%. As stated in the resolution, if for any reason a NPV of at least 3% is not achieved from the sale bids, the City will not move forward with issuing the bonds.

Hilltop Ridge Special Benefit Districts

At the October 19, 2020 meeting, Council approved Resolution No. 2065 and Resolution No. 2066 determining the advisability of certain improvements in the City of Gardner, Kansas, and

authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 Et Seq. (Hilltop Ridge Special Benefit Districts).

2019A Temporary Notes Refunding

The purpose of this refunding is to renew Temporary Notes related to the Tuscan Farm Benefit Districts to extend the maturity date. The construction improvements were delayed due to staffing changes with the engineering firm designing the improvements. Extending the maturity of the temporary notes provides more time for the construction improvements to be completed before permanent debt is issued and specials are assessed.

The attached resolution authorizes all preparations to facilitate sale of the bonds and temporary notes.

Bond Counsel Ellsworth will be available at the meeting to answer any questions.

Financial Impact:

- I-35 and Gardner Road – Future debt service payments will come from the Special Highway Fund
- 2010A Bonds Refunding – The refunding of the 2010A Bonds will result in approximately \$132,200 in interest savings.
- Hilltop Special Benefit Districts – General Obligation Bonds will be issued after the infrastructure has been completed. The bond proceeds will be used to pay off the temporary notes. Special Assessments will be levied against the property for the repayment of the bonds.
- 2019A Temporary Notes Refunding (Tuscan Farms) – General Obligation Bonds will be issued after the infrastructure has been completed. The bond proceeds will be used to pay off the temporary notes. Special Assessments will be levied against the property for the repayment of the bonds.

Attachments Included:

- Resolution No. 2067 authorizing the sale of the General Obligation Bonds and General Obligation Temporary Notes
- Series 2020B GO Bonds (Municipal Advisor Kimmel's bond sale document)
- Series 2020C GO Temporary Notes (Municipal Advisor Kimmel's temporary note sale document)

Suggested Motion:

Adopt Resolution No. 2067, a resolution authorizing the offer for public sale of certain General Obligation Bonds and Notes of the City of Gardner, Kansas.

RESOLUTION NO. 2067

A RESOLUTION AUTHORIZING THE OFFER FOR PUBLIC SALE OF CERTAIN GENERAL OBLIGATION BONDS AND NOTES OF THE CITY OF GARDNER, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. The following bonds and notes of the City of Gardner, Kansas (the “City”), shall be offered at competitive public sale on November 16, 2020, at 11:00 a.m., Central Time, or at such other date and time approved by the City’s Finance Director, provided such date is a City Council meeting date:

Approximate Principal Amount	Name of Obligation	Series
\$5,205,000	General Obligation Refunding and Improvement Bonds	2020B (the “Bonds”)
\$5,280,000	General Obligation Temporary Notes	2020C (the “Notes”)

Section 2. The Finance Director, in conjunction with Ehlers & Associates, Inc., the City’s Municipal Advisor, is authorized and directed to receive bids for the purchase of the Bonds and the Notes (collectively, the “Securities,” and each a “Security”) on behalf of the City at the specified time and place and to deliver a report on all bids so received to the Governing Body at its meeting to be held at 7:00 p.m. on the sale date at which meeting the Governing Body shall review the bids and act on the acceptance of the best bid. Such bids may be received electronically through an experienced municipal bond electronic bid provider and through other means determined by the Finance Director, in consultation with the City’s Bond Counsel, Kutak Rock LLP, and Municipal Advisor, to be in the best interest of the City. The issuance of the Securities is conditioned on receipt of an opinion of the City’s Bond Counsel to the effect that the Securities have been validly issued and that the interest on the Bonds and the Notes is exempt from federal income taxation subject to the standard exceptions. The inclusion of the refunding component in the Bonds is conditioned on net present value savings from the refunding in an amount acceptable to the Governing Body of the City.

Section 3. The Mayor and City Clerk are authorized to cause to be prepared and executed a preliminary official statement and notice of sale for use in connection with the public sale of the Securities.

Section 4. The Finance Director is authorized and directed to give, or cause to be given, notice of the sale of the Bonds by publishing a summary of the notice of sale not less than six days before the date of the sale in the official City newspaper and the *Kansas Register* and by making copies of the notice of sale and preliminary official statement available to prospective purchasers of the Bonds.

Section 5. For the purpose of enabling each purchaser of a Security (collectively, the “Original Purchasers” or individually, an “Original Purchaser”) to comply with the requirements of Rule 15c2-12(b)(i) of the Securities and Exchange Commission, the appropriate officers of the City are authorized, if requested, to provide each Original Purchaser a letter or certification to the effect that the City deems the information contained in the preliminary official statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(i), and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable each Original Purchaser to comply with the requirements of such Rule.

Section 6. The City agrees to provide to each Original Purchaser within seven business days of the date of the sale of the Securities or within sufficient time to accompany any confirmation that requests payment from any customer of each Original Purchaser, whichever is earlier, sufficient copies of the final official statement to enable the Original Purchasers to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 7. The City agrees to enter into a written agreement or contract on or before the date of delivery of each Security and to provide ongoing disclosure about the City for the benefit of the holders of such Security as required by Rule 15c2-12(b)(5)(1) of the Securities and Exchange Commission. The City may further designate Kutak Rock LLP, upon the request of the City, as an agent of the City for the purpose of obtaining and disseminating information in connection with the Rule.

Section 8. The City Administrator; the Finance Director; the City Clerk; the City’s Bond Counsel; the Municipal Advisor; and the other officers and representatives of the City are authorized and directed to take such other action as may be necessary to carry out the public sale of the Securities.

Section 9. This Resolution shall be in full force and effect from and after its adoption.

[remainder of page intentionally left blank]

ADOPTED by the Governing Body of the City of Gardner, Kansas, on October 19, 2020.

CITY OF GARDNER, KANSAS

Mayor

(Seal)

ATTEST:

City Clerk

October 19, 2020
Pre-Sale Report for

City of Gardner, Kansas

\$5,205,000 General Obligation Bonds,
Series 2020B



Prepared by:

Ehlers
3060 Centre Pointe Drive
Roseville, MN 55113

Advisors:

Bruce Kimmel, Senior Municipal Advisor
Nick Anhut, Senior Municipal Advisor
Chris Mickelson, Municipal Advisor

BUILDING COMMUNITIES. IT'S WHAT WE DO.

EXECUTIVE SUMMARY OF PROPOSED DEBT

Proposed Issue:

\$5,205,000 General Obligation Bonds, Series 2020B

Purposes:

The proposed issue includes financing to fund the City's portion of a freeway interchange project and current refund the City's remaining Series 2010A Bonds.

- I35 & Gardner Road Interchange. The City will pay debt service on this portion with Special Highway Funds.
- Current Refunding of the Series 2010A Bonds. The City will pay debt service on this portion with ad valorem property taxes, as it has with the existing bonds.

Interest rates on the obligations proposed to be refunded are 3.00% to 3.60%. The refunding is expected to reduce debt service expense by approximately \$132,300 over the next 10 years. The Net Present Value Benefit of the refunding is estimated to be \$120,800, equal to 7.6% of the refunded principal.

This refunding is considered to be a Current Refunding as the Series 2010A Bonds being refunded became callable (pre-payable) on October 1, 2020.

Authority:

The Bonds are being issued pursuant to K.S.A. 12-685 *et seq.* and K.S.A. 12-427 *et seq.*, all as amended. The Bonds will be general obligations of the City for which its full faith, credit and taxing powers are pledged.

Term/Call Feature:

The Bonds are being issued for a term of 9 years, 10 months. Principal on the Bonds will be due on October 1 in the years 2021 through 2030. Interest is payable every six months beginning October 1, 2021. The Bonds will be subject to prepayment at the discretion of the City on October 1, 2026 or any date thereafter.

Bank Qualification:

Because the City has already issued more than \$10,000,000 in tax-exempt obligations during 2020, the City will be not able to designate the Bonds as "bank qualified" obligations.

Rating:

The City's most recent bond issues were rated AA- with a stable outlook by Standard & Poor's. The City will request a new rating for the Bonds.

Basis for Recommendation:

The proposed general obligation issue is the most cost-efficient means of funding the specified purposes and is expected to yield the lowest possible interest cost while also preserving future prepayment flexibility. Moreover, the competitive sale approach described below is consistent with the City's historical debt issuance method, as well as best practices published by the Governmental Finance Officers Association.

Method of Sale/Placement:

We will solicit competitive bids for the purchase of the Bonds from underwriters and banks.

We will include an allowance for discount bidding in the terms of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction.

If the Bonds are purchased at a price greater than the minimum bid amount (maximum discount), the unused allowance may be used to reduce your borrowing amount.

Premium Pricing:

In some cases, investors in municipal bonds prefer "premium" pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the bonds. The sum of the amounts paid in excess of face value is considered "reoffering premium." The underwriter of the bonds will retain a portion of this reoffering premium as their compensation (or "discount") but will pay the remainder of the premium to the City. The amount of premium varies, but it is not uncommon to see premiums for new issues in the range of 2.00% to 10.00% of the face amount of the issue. This means that an issuer with a \$2,000,000 offering may receive bids that result in proceeds of \$2,040,000 to \$2,200,000.

For the Bonds, we have been directed to use the net premium to reduce the size of the issue. The resulting adjustments may slightly change the true interest cost of the issue.

Review of Existing Debt:

We have reviewed all outstanding indebtedness for the City and find that, other than the Series 2010A Bonds to be refunded, there are no other immediate refunding opportunities. We will continue to monitor the market and the call dates for the City's outstanding debt, including several bonds callable in the second half of 2021.

Continuing Disclosure:

Because the City has more than \$10,000,000 in outstanding debt (including this issue) and this issue is over \$1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the “MSRB”), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds. It files the required annual information itself and engages Kutak Rock to file material event notices, as applicable.

Arbitrage Monitoring:

Because the Bonds are tax-exempt securities, the City must ensure compliance with certain Internal Revenue Service (IRS) rules throughout the life of the issue. These rules apply to all gross proceeds of the issue, including initial bond proceeds and investment earnings in construction, escrow, debt service, and any reserve funds. How issuers spend bond proceeds and how they track interest earnings on funds (arbitrage/yield restriction compliance) are common subjects of IRS inquiries. Your specific responsibilities, along with any applicable exemptions from the rules, will be detailed in the Closing Certificate prepared by your Bond Attorney. The City has retained Kutak Rock to assist in complying with these rules.

Risk Factors:

The Bonds are being issued in part to finance a current refunding of prior City debt, callable October 1, 2020. This refunding is being undertaken with the understanding that the City does not wish to prepay this debt prior to the new call date of October 1, 2026, and that bond market conditions warrant the refunding at this time.

Other Service Providers:

This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a particular firm to provide a service, we have assumed that you will continue that relationship.

Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.

Bond Counsel: Kutak Rock LLP

Paying Agent: State of Kansas - Office of the State Treasurer

Rating Agency: Standard & Poor’s Global Ratings (S&P)

PROPOSED DEBT ISSUANCE SCHEDULE

Pre-Sale Review by City Council:	October 19, 2020
Due Diligence Call to review Official Statement:	Week of November 2
Distribute Official Statement:	Week of November 2
Conference with Rating Agency:	November 4
City Council Meeting to Award Sale of the Bonds:	November 16, 2020
Estimated Closing Date:	December 10, 2020
Redemption Date for the Obligations Being Refunded:	December 18, 2020

Attachments

Estimated Sources and Uses of Funds

Estimated Debt Service Schedules

Estimated Debt Service Comparison (Refunding Portion)

EHLERS' CONTACTS

Bruce Kimmel, Senior Municipal Advisor	(651) 697-8572
Nick Anhut, Senior Municipal Advisor	(651) 697-8507
Chris Mickelson, Municipal Advisor	(651) 697-8556
Jen Chapman, Senior Public Finance Analyst	(651) 697-8566
Alicia Gage, Senior Financial Analyst	(651) 697-8551

City of Gardner, Kansas

\$5,205,000 General Obligation Bonds, Series 2020A

Issue Summary

Assumes Current Market Non-BQ AA- Rates plus 15bps

Total Issue Sources And Uses

Dated 12/10/2020 | Delivered 12/10/2020

	I35 & Gardner Road Interchange	Cur Ref 2010A Bonds	Issue Summary
Sources Of Funds			
Par Amount of Bonds	\$3,565,000.00	\$1,640,000.00	\$5,205,000.00
Total Sources	\$3,565,000.00	\$1,640,000.00	\$5,205,000.00
Uses Of Funds			
Total Underwriter's Discount (1.200%)	42,780.00	19,680.00	62,460.00
Costs of Issuance	42,280.02	19,449.98	61,730.00
Deposit to Project Construction Fund	3,477,091.00	-	3,477,091.00
Deposit to Current Refunding Fund	-	1,601,033.46	1,601,033.46
Rounding Amount	2,848.98	(163.44)	2,685.54
Total Uses	\$3,565,000.00	\$1,640,000.00	\$5,205,000.00

City of Gardner, Kansas

\$5,205,000 General Obligation Bonds, Series 2020A

Issue Summary

Assumes Current Market Non-BQ AA- Rates plus 15bps

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
12/10/2020	-	-	-	-	-
10/01/2021	505,000.00	0.550%	49,823.65	554,823.65	554,823.65
04/01/2022	-	-	29,430.00	29,430.00	-
10/01/2022	490,000.00	0.650%	29,430.00	519,430.00	548,860.00
04/01/2023	-	-	27,837.50	27,837.50	-
10/01/2023	505,000.00	0.800%	27,837.50	532,837.50	560,675.00
04/01/2024	-	-	25,817.50	25,817.50	-
10/01/2024	510,000.00	0.900%	25,817.50	535,817.50	561,635.00
04/01/2025	-	-	23,522.50	23,522.50	-
10/01/2025	520,000.00	1.000%	23,522.50	543,522.50	567,045.00
04/01/2026	-	-	20,922.50	20,922.50	-
10/01/2026	525,000.00	1.100%	20,922.50	545,922.50	566,845.00
04/01/2027	-	-	18,035.00	18,035.00	-
10/01/2027	525,000.00	1.450%	18,035.00	543,035.00	561,070.00
04/01/2028	-	-	14,228.75	14,228.75	-
10/01/2028	530,000.00	1.650%	14,228.75	544,228.75	558,457.50
04/01/2029	-	-	9,856.25	9,856.25	-
10/01/2029	545,000.00	1.750%	9,856.25	554,856.25	564,712.50
04/01/2030	-	-	5,087.50	5,087.50	-
10/01/2030	550,000.00	1.850%	5,087.50	555,087.50	560,175.00
Total	\$5,205,000.00	-	\$399,298.65	\$5,604,298.65	-

Yield Statistics

Bond Year Dollars	\$28,112.38
Average Life	5.401 Years
Average Coupon	1.4203661%
Net Interest Cost (NIC)	1.6425459%
True Interest Cost (TIC)	1.6482902%
Bond Yield for Arbitrage Purposes	1.4134550%
All Inclusive Cost (AIC)	1.8843500%

IRS Form 8038

Net Interest Cost	1.4203661%
Weighted Average Maturity	5.401 Years

City of Gardner, Kansas

\$3,565,000 General Obligation Bonds, Series 2020A

I35 & Gardner Road Interchange

Assumes Current Market Non-BQ AA- Rates plus 15bps

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
12/10/2020	-	-	-	-	-
10/01/2021	350,000.00	0.550%	34,061.15	384,061.15	384,061.15
04/01/2022	-	-	20,106.25	20,106.25	-
10/01/2022	345,000.00	0.650%	20,106.25	365,106.25	385,212.50
04/01/2023	-	-	18,985.00	18,985.00	-
10/01/2023	345,000.00	0.800%	18,985.00	363,985.00	382,970.00
04/01/2024	-	-	17,605.00	17,605.00	-
10/01/2024	350,000.00	0.900%	17,605.00	367,605.00	385,210.00
04/01/2025	-	-	16,030.00	16,030.00	-
10/01/2025	350,000.00	1.000%	16,030.00	366,030.00	382,060.00
04/01/2026	-	-	14,280.00	14,280.00	-
10/01/2026	355,000.00	1.100%	14,280.00	369,280.00	383,560.00
04/01/2027	-	-	12,327.50	12,327.50	-
10/01/2027	360,000.00	1.450%	12,327.50	372,327.50	384,655.00
04/01/2028	-	-	9,717.50	9,717.50	-
10/01/2028	365,000.00	1.650%	9,717.50	374,717.50	384,435.00
04/01/2029	-	-	6,706.25	6,706.25	-
10/01/2029	370,000.00	1.750%	6,706.25	376,706.25	383,412.50
04/01/2030	-	-	3,468.75	3,468.75	-
10/01/2030	375,000.00	1.850%	3,468.75	378,468.75	381,937.50
Total	\$3,565,000.00	-	\$272,513.65	\$3,837,513.65	-

Yield Statistics

Bond Year Dollars	\$19,191.71
Average Life	5.383 Years
Average Coupon	1.4199551%
Net Interest Cost (NIC)	1.6428639%
True Interest Cost (TIC)	1.6486135%
Bond Yield for Arbitrage Purposes	1.4134550%
All Inclusive Cost (AIC)	1.8854459%

IRS Form 8038

Net Interest Cost	1.4199551%
Weighted Average Maturity	5.383 Years

City of Gardner, Kansas

\$1,640,000 General Obligation Bonds, Series 2020A

Cur Ref 2010A Bonds

Assumes Current Market Non-BQ AA- Rates plus 15bps

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
12/10/2020	-	-	-	-	-
10/01/2021	155,000.00	0.550%	15,762.50	170,762.50	170,762.50
04/01/2022	-	-	9,323.75	9,323.75	-
10/01/2022	145,000.00	0.650%	9,323.75	154,323.75	163,647.50
04/01/2023	-	-	8,852.50	8,852.50	-
10/01/2023	160,000.00	0.800%	8,852.50	168,852.50	177,705.00
04/01/2024	-	-	8,212.50	8,212.50	-
10/01/2024	160,000.00	0.900%	8,212.50	168,212.50	176,425.00
04/01/2025	-	-	7,492.50	7,492.50	-
10/01/2025	170,000.00	1.000%	7,492.50	177,492.50	184,985.00
04/01/2026	-	-	6,642.50	6,642.50	-
10/01/2026	170,000.00	1.100%	6,642.50	176,642.50	183,285.00
04/01/2027	-	-	5,707.50	5,707.50	-
10/01/2027	165,000.00	1.450%	5,707.50	170,707.50	176,415.00
04/01/2028	-	-	4,511.25	4,511.25	-
10/01/2028	165,000.00	1.650%	4,511.25	169,511.25	174,022.50
04/01/2029	-	-	3,150.00	3,150.00	-
10/01/2029	175,000.00	1.750%	3,150.00	178,150.00	181,300.00
04/01/2030	-	-	1,618.75	1,618.75	-
10/01/2030	175,000.00	1.850%	1,618.75	176,618.75	178,237.50
Total	\$1,640,000.00	-	\$126,785.00	\$1,766,785.00	-

Yield Statistics

Bond Year Dollars	\$8,920.67
Average Life	5.439 Years
Average Coupon	1.4212503%
Net Interest Cost (NIC)	1.6418616%
True Interest Cost (TIC)	1.6475946%
Bond Yield for Arbitrage Purposes	1.4134550%
All Inclusive Cost (AIC)	1.8819921%

IRS Form 8038

Net Interest Cost	1.4212503%
Weighted Average Maturity	5.439 Years

City of Gardner, Kansas

\$1,640,000 General Obligation Bonds, Series 2020A

Cur Ref 2010A Bonds

Assumes Current Market Non-BQ AA- Rates plus 15bps

Debt Service Comparison

Date	Total P+I	Net New D/S	Old Net D/S	Savings
10/01/2021	170,762.50	170,762.50	186,585.00	15,822.50
10/01/2022	163,647.50	163,647.50	177,535.00	13,887.50
10/01/2023	177,705.00	177,705.00	188,635.00	10,930.00
10/01/2024	176,425.00	176,425.00	189,285.00	12,860.00
10/01/2025	184,985.00	184,985.00	199,785.00	14,800.00
10/01/2026	183,285.00	183,285.00	194,628.76	11,343.76
10/01/2027	176,415.00	176,415.00	189,266.26	12,851.26
10/01/2028	174,022.50	174,022.50	188,697.50	14,675.00
10/01/2029	181,300.00	181,300.00	192,960.00	11,660.00
10/01/2030	178,237.50	178,237.50	191,660.00	13,422.50
Total	\$1,766,785.00	\$1,766,785.00	\$1,899,037.52	\$132,252.52

PV Analysis Summary (Net to Net)

Gross PV Debt Service Savings.....	120,973.47
Net PV Cashflow Savings @ 1.882%(AIC).....	120,973.47
Contingency or Rounding Amount.....	(163.44)
Net Present Value Benefit	\$120,810.03
Net PV Benefit / \$1,763,718.44 PV Refunded Debt Service	6.850%
Net PV Benefit / \$1,590,000 Refunded Principal...	7.598%
Net PV Benefit / \$1,640,000 Refunding Principal..	7.366%

Refunding Bond Information

Refunding Dated Date	12/10/2020
Refunding Delivery Date	12/10/2020

City of Gardner, KS

\$2,770,000 General Obligation Bonds, Series 2010A

Debt Service To Maturity And To Call

Date	Refunded Bonds	Refunded Interest	D/S To Call	Principal	Coupon	Interest	Refunded D/S
12/10/2020	-	-	-	-	-	-	-
12/18/2020	1,590,000.00	11,033.46	1,601,033.46	-	-	-	-
04/01/2021	-	-	-	-	-	25,792.50	25,792.50
10/01/2021	-	-	-	135,000.00	3.000%	25,792.50	160,792.50
04/01/2022	-	-	-	-	-	23,767.50	23,767.50
10/01/2022	-	-	-	130,000.00	3.000%	23,767.50	153,767.50
04/01/2023	-	-	-	-	-	21,817.50	21,817.50
10/01/2023	-	-	-	145,000.00	3.000%	21,817.50	166,817.50
04/01/2024	-	-	-	-	-	19,642.50	19,642.50
10/01/2024	-	-	-	150,000.00	3.000%	19,642.50	169,642.50
04/01/2025	-	-	-	-	-	17,392.50	17,392.50
10/01/2025	-	-	-	165,000.00	3.125%	17,392.50	182,392.50
04/01/2026	-	-	-	-	-	14,814.38	14,814.38
10/01/2026	-	-	-	165,000.00	3.250%	14,814.38	179,814.38
04/01/2027	-	-	-	-	-	12,133.13	12,133.13
10/01/2027	-	-	-	165,000.00	3.375%	12,133.13	177,133.13
04/01/2028	-	-	-	-	-	9,348.75	9,348.75
10/01/2028	-	-	-	170,000.00	3.375%	9,348.75	179,348.75
04/01/2029	-	-	-	-	-	6,480.00	6,480.00
10/01/2029	-	-	-	180,000.00	3.500%	6,480.00	186,480.00
04/01/2030	-	-	-	-	-	3,330.00	3,330.00
10/01/2030	-	-	-	185,000.00	3.600%	3,330.00	188,330.00
Total	\$1,590,000.00	\$11,033.46	\$1,601,033.46	\$1,590,000.00	-	\$309,037.52	\$1,899,037.52

Yield Statistics

Base date for Avg. Life & Avg. Coupon Calculation	12/10/2020
Average Life	5.613 Years
Average Coupon	3.3517313%
Weighted Average Maturity (Par Basis)	5.613 Years
Weighted Average Maturity (Original Price Basis)	5.613 Years

Refunding Bond Information

Refunding Dated Date	12/10/2020
Refunding Delivery Date	12/10/2020

October 19, 2020
Pre-Sale Report for

City of Gardner, Kansas

\$5,280,000 General Obligation Temporary Notes,
Series 2020C



Prepared by:

Ehlers
3060 Centre Pointe Drive
Roseville, MN 55113

Advisors:

Bruce Kimmel, Senior Municipal Advisor
Nick Anhut, Senior Municipal Advisor
Chris Mickelson, Municipal Advisor

BUILDING COMMUNITIES. IT'S WHAT WE DO.

EXECUTIVE SUMMARY OF PROPOSED DEBT

Proposed Issue:

\$5,280,000 General Obligation Temporary Notes, Series 2020C

Purposes:

The proposed issue includes financing to fund special benefit district improvements (Hilltop Ridge Project) and renew the Series 2019A temporary notes (Tuscan Farms Project) for an additional year (i.e. extending the note maturity from October 1, 2021 to October 1, 2022).

The Series 2019A Notes became callable (subject to prepayment) on October 1, 2020.

The City will fund Note interest payments from capitalized interest, and the Note principal maturity will from one or more definitive General Obligation Bond financings.

Authority:

The Notes are being issued pursuant to K.S.A. 10-123 *et seq.* and K.S.A. 12-6a01 *et seq.*, all as amended, and will be general obligations of the City for which its full faith, credit and taxing powers are pledged.

Term/Call Feature:

The Notes are being issued for a term of approximately 2 years. Principal on the Notes will be due on October 1, 2022. Interest is payable from capitalized interest every six months beginning October 1, 2021.

The Notes will be subject to prepayment at the discretion of the City on October 1, 2021 or any date thereafter.

Bank Qualification:

Because the City has already issued more than \$10,000,000 in tax-exempt obligations during 2020, the City will be not able to designate the Bonds as “bank qualified” obligations.

Rating:

The City’s most recent bond issues were rated AA- with a stable outlook, and its most recent note issues were rated SP-1+, both by S&P Global Ratings (Standard & Poor’s). The City will request a new rating for the Notes.

Basis for Recommendation:

The proposed general obligation issue is the most cost-efficient means of funding the specified purposes and is expected to yield the lowest possible interest cost while also preserving future prepayment flexibility. Moreover, the competitive sale approach described below is consistent with the City's historical debt issuance method, as well as best practices published by the Governmental Finance Officers Association.

Method of Sale/Placement:

We will solicit competitive bids for the purchase of the Notes from underwriters and banks.

We will include an allowance for discount bidding in the terms of the issue. The discount is treated as an interest item and provides the underwriter with all or a portion of their compensation in the transaction.

If the Notes are purchased at a price greater than the minimum bid amount (maximum discount), the unused allowance may be used to reduce your borrowing amount.

Premium Pricing:

In some cases, investors in municipal bonds prefer "premium" pricing structures. A premium is achieved when the coupon for any maturity (the interest rate paid by the issuer) exceeds the yield to the investor, resulting in a price paid that is greater than the face value of the bonds. The sum of the amounts paid in excess of face value is considered "reoffering premium." The underwriter of the bonds will retain a portion of this reoffering premium as their compensation (or "discount") but will pay the remainder of the premium to the City. The amount of premium varies, but it is not uncommon to see premiums for new issues in the range of 2.00% to 10.00% of the face amount of the issue. This means that an issuer with a \$2,000,000 offering may receive bids that result in proceeds of \$2,040,000 to \$2,200,000.

For the Notes we have been directed to use the net premium to reduce the size of the issue. The resulting adjustments may slightly change the true interest cost of the issue.

Continuing Disclosure:

Because the City has more than \$10,000,000 in outstanding debt (including this issue) and this issue is over \$1,000,000, the City will be agreeing to provide certain updated Annual Financial Information and its Audited Financial Statement annually as well as providing notices of the occurrence of certain reportable events to the Municipal Securities Rulemaking Board (the "MSRB"), as required by rules of the Securities and Exchange Commission (SEC). The City is already obligated to provide such reports for its existing bonds. It files the required annual information itself and engages Kutak Rock to file material event notices, as applicable.

Arbitrage Monitoring:

Because the Bonds are tax-exempt securities, the City must ensure compliance with certain Internal Revenue Service (IRS) rules throughout the life of the issue. These rules apply to all

gross proceeds of the issue, including initial bond proceeds and investment earnings in construction, escrow, debt service, and any reserve funds. How issuers spend bond proceeds and how they track interest earnings on funds (arbitrage/yield restriction compliance) are common subjects of IRS inquiries. Your specific responsibilities, along with any applicable exemptions from the rules, will be detailed in the Closing Certificate prepared by your Bond Attorney. The City has retained Kutak Rock to assist in complying with these rules.

Investment of Note Proceeds:

To maximize interest earnings, we recommend using an SEC registered investment advisor to assist with the investment of Note proceeds until they are needed to pay project costs. Ehlers is a registered investment advisor and can assist the City in developing an appropriate investment strategy for the Hilltop Ridge portion of the Notes, if needed.

Other Service Providers:

This debt issuance will require the engagement of other public finance service providers. This section identifies those other service providers, so Ehlers can coordinate their engagement on your behalf. Where you have previously used a particular firm to provide a service, we have assumed that you will continue that relationship.

Fees charged by these service providers will be paid from proceeds of the obligation, unless you notify us that you wish to pay them from other sources. Our pre-sale bond sizing includes a good faith estimate of these fees, but the final fees may vary. If you have any questions pertaining to the identified service providers or their role, or if you would like to use a different service provider for any of the listed services please contact us.

Bond Counsel: Kutak Rock LLP

Paying Agent: State of Kansas - Office of the State Treasurer

Rating Agency: Standard & Poor's Global Ratings (S&P)

PROPOSED DEBT ISSUANCE SCHEDULE

Pre-Sale Review by City Council:	October 19, 2020
Due Diligence Call to review Official Statement:	Week of November 2
Distribute Official Statement:	Week of November 2
Conference with Rating Agency:	November 4, 2020
City Council Meeting to Award Sale of the Notes:	November 16, 2020
Estimated Closing Date:	December 10, 2020
Redemption Date for the Obligations Being Refunded:	December 18, 2020

Attachments

Estimated Sources and Uses of Funds
 Estimated Proposed Debt Service Schedule
 Estimated Debt Service Comparison

EHLERS' CONTACTS

Bruce Kimmel, Senior Municipal Advisor	(651) 697-8572
Nick Anhut, Senior Municipal Advisor	(651) 697-8507
Chris Mickelson, Municipal Advisor	(651) 697-8556
Jen Chapman, Senior Public Finance Analyst	(651) 697-8566
Alicia Gage, Senior Financial Analyst	(651) 697-8551

City of Gardner, Kansas

\$5,280,000 General Obligation Temporary Notes, Series 2020C

Issue Summary

Assumes Current Market Non-BQ AA- Rates plus 15bps

Total Issue Sources And Uses

Dated 12/10/2020 | Delivered 12/10/2020

	Hilltop Special Benefit District	Cur Ref 2019A Notes	Issue Summary
Sources Of Funds			
Par Amount of Bonds	\$1,475,000.00	\$3,805,000.00	\$5,280,000.00
Transfers from Prior Issue CIF Funds	-	63,325.00	63,325.00
Total Sources	\$1,475,000.00	\$3,868,325.00	\$5,343,325.00
Uses Of Funds			
Total Underwriter's Discount (1.200%)	17,700.00	45,660.00	63,360.00
Costs of Issuance	15,233.28	39,296.72	54,530.00
Deposit to Capitalized Interest (CIF) Fund	17,337.40	44,724.60	62,062.00
Deposit to Project Construction Fund	1,423,575.00	-	1,423,575.00
Deposit to Current Refunding Fund	-	3,738,544.51	3,738,544.51
Rounding Amount	1,154.32	99.17	1,253.49
Total Uses	\$1,475,000.00	\$3,868,325.00	\$5,343,325.00

City of Gardner, Kansas

\$5,280,000 General Obligation Temporary Notes, Series 2020C

Issue Summary

Assumes Current Market Non-BQ AA- Rates plus 15bps

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
12/10/2020	-	-	-	-	-
10/01/2021	-	-	27,742.00	27,742.00	27,742.00
04/01/2022	-	-	17,160.00	17,160.00	-
10/01/2022	5,280,000.00	0.650%	17,160.00	5,297,160.00	5,314,320.00
Total	\$5,280,000.00	-	\$62,062.00	\$5,342,062.00	-

Yield Statistics

Bond Year Dollars	\$9,548.00
Average Life	1.808 Years
Average Coupon	0.6500000%
Net Interest Cost (NIC)	1.3135945%
True Interest Cost (TIC)	1.3231628%
Bond Yield for Arbitrage Purposes	0.6497084%
All Inclusive Cost (AIC)	1.9111968%

IRS Form 8038

Net Interest Cost	0.6500000%
Weighted Average Maturity	1.808 Years

City of Gardner, Kansas

\$5,280,000 General Obligation Temporary Notes, Series 2020C

Issue Summary

Assumes Current Market Non-BQ AA- Rates plus 15bps

Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S	Fiscal Total
12/10/2020	-	-	-	-	-	-	-
10/01/2021	-	-	27,742.00	27,742.00	(27,742.00)	-	-
04/01/2022	-	-	17,160.00	17,160.00	(17,160.00)	-	-
10/01/2022	5,280,000.00	0.650%	17,160.00	5,297,160.00	(17,160.00)	5,280,000.00	5,280,000.00
Total	\$5,280,000.00	-	\$62,062.00	\$5,342,062.00	(62,062.00)	\$5,280,000.00	-

City of Gardner, Kansas

\$1,475,000 General Obligation Temporary Notes, Series 2020C

Hilltop Special Benefit District

Assumes Current Market Non-BQ AA- Rates plus 15bps

Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S	Fiscal Total
12/10/2020	-	-	-	-	-	-	-
10/01/2021	-	-	7,749.90	7,749.90	(7,749.90)	-	-
04/01/2022	-	-	4,793.75	4,793.75	(4,793.75)	-	-
10/01/2022	1,475,000.00	0.650%	4,793.75	1,479,793.75	(4,793.75)	1,475,000.00	1,475,000.00
Total	\$1,475,000.00	-	\$17,337.40	\$1,492,337.40	(17,337.40)	\$1,475,000.00	-

City of Gardner, Kansas

\$3,805,000 General Obligation Temporary Notes, Series 2020C

Cur Ref 2019A Notes

Assumes Current Market Non-BQ AA- Rates plus 15bps

Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S	Fiscal Total
12/10/2020	-	-	-	-	-	-	-
10/01/2021	-	-	19,992.10	19,992.10	(19,992.10)	-	-
04/01/2022	-	-	12,366.25	12,366.25	(12,366.25)	-	-
10/01/2022	3,805,000.00	0.650%	12,366.25	3,817,366.25	(12,366.25)	3,805,000.00	3,805,000.00
Total	\$3,805,000.00	-	\$44,724.60	\$3,849,724.60	(44,724.60)	\$3,805,000.00	-

COUNCIL ACTION FORM

NEW BUSINESS ITEM No. 8

MEETING DATE: OCTOBER 19, 2020

STAFF CONTACT: MATTHEW WOLFF, FINANCE DIRECTOR

Agenda Item: Consider adopting a resolution approving the execution and delivery of a First Amended and Restated Development Agreement for a development project within the City (Grata Development).

Strategic Priority: Promote Economic Development, Fiscal Stewardship, Quality of Life

Department: Finance

Staff Recommendation:

Staff recommends adopting a resolution approving the execution and delivery of a First Amended and Restated Development Agreement for a project within the City (Grata Development).

Background/Description of Item:

At the October 7, 2019 meeting, Council adopted Resolution No. 2030 authorizing the execution and delivery of a development agreement with Grata Development for a mixed-use development located at 175th Street and Clare Road.

The proposed resolution would authorize the execution and delivery of a First Amended and Restated Development Agreement (A&R Development Agreement) for the project. The A&R Development Agreement clarifies the City's obligations to provide water and electric infrastructure improvements and addresses other obligations of the City and the Developer.

The City's bond counsel, Tyler Ellsworth of Kutak Rock, will provide an overview of the proposed resolution and the Amended and Restated Development Agreement.

Financial Impact:

The City anticipates issuing General Obligation Bonds to finance the water infrastructure improvements. Future debt service payments will come from the Water Fund. The City anticipates paying for the electric infrastructure improvements with cash from the Electric Fund.

Attachments:

- Resolution No. 2068
- First Amended and Restated Development Agreement (Grata Development)

Suggested Motion:

Adopt Resolution No. 2068, a resolution of the City of Gardner, Kansas, approving the execution and delivery of a first amended and restated development agreement for a development project within the City.

RESOLUTION NO. 2068

A RESOLUTION OF THE CITY OF GARDNER, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF A FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR A DEVELOPMENT PROJECT WITHIN THE CITY (GRATA DEVELOPMENT, LLC).

WHEREAS, the City of Gardner, Kansas (the “City”), is a duly organized city, created, organized and existing under the laws of the State of Kansas (the “State”);

WHEREAS, pursuant to Resolution No. 2030, adopted by the Governing Body of the City on October 7, 2019, the City previously entered into a Development Agreement dated as of October 7, 2019 (the “Original Agreement”), by and between the City and Grata Development, LLC (the “Developer”), for the development of certain commercial and residential improvements, along with certain related infrastructure (collectively, the “Project”), generally located south of 175th Street and between Interstate 35 and Clare Road within the City; and

WHEREAS, the City and the Developer have determined it necessary and desirable to enter into a First Amended and Restated Development Agreement (the “A&R Development Agreement”), by and between the City and the Developer, to amend and restate the Original Agreement to clarify the rights and obligations of the parties relating to the construction of certain infrastructure for the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. The City is hereby authorized to enter into the A&R Development Agreement in substantially the form presented to and reviewed by the Governing Body on the date of this Resolution (copies of this document are on file in the records of the City) with such changes therein as shall be approved by the Mayor, with the Mayor’s signature thereon being conclusive evidence of his approval thereof, and the same are hereby approved in all respects.

Section 2. The Mayor, City Clerk, and other officers and representatives of the City are hereby authorized and directed to execute, seal, attest and deliver the A&R Development Agreement and such other documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of and as the act and deed of the City.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

[remainder of page left blank intentionally]

ADOPTED by the Governing Body of the City of Gardner, Kansas on October 19, 2020.

CITY OF GARDNER, KANSAS

(Seal)

Mayor

ATTEST:

City Clerk

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of _____, 2020 (the “Effective Date”) by and between the **CITY OF GARDNER, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “City”) and **GRATA DEVELOPMENT, LLC**, a Kansas limited liability company (the “Developer”), pursuant to Resolution No. ____ adopted by the Governing Body of the City on _____, 2020. This Agreement amends and restates in its entirety that certain Development Agreement, dated as of October 7, 2019, by and between the City and the Developer.

RECITALS

A. Day3, LLC, a Missouri limited liability company (“Project Site Owner”), owns certain real property which is located in the City and is generally located southeast of Interstate 35 and 175th Street, as legally described on **Exhibit A** and generally depicted on **Exhibit B**, as attached hereto (the “Project Site”).

B. Following the Developer’s acquisition of the Project Site from Project Site Owner, the Developer wishes to improve or cause to be improved the Project Site by designing, developing and constructing certain commercial, single-family residential, and multifamily residential buildings, parking improvements, and other improvements as more particularly set forth in Section 2.01 below (collectively, the “Project”).

C. On or about August 21, 2019, Project Site Owner submitted a Consent for Annexation petitioning to annex the Project Site into the City on the condition that the Developer and the City agree on the form of a Development Agreement for development of the Project Site, with the Governing Body of the City approving such agreement on or before October 21, 2019.

D. On September 3, 2019, the Governing Body of the City passed Ordinance No. 2622 annexing the Project Site into the City.

E. To facilitate development of the Project, the Developer will finance and construct certain infrastructure as more particularly set forth in Section 2.01(c) below (the “Developer Infrastructure Improvements”).

F. In addition, the Developer has requested, and the City has agreed, that the City construct certain other infrastructure to facilitate development of the Project as more particularly set forth in Section 2.01(d) below (the “City Infrastructure Improvements”).

G. The City has the authority to create community improvement districts pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the “CID Act”), for the purpose of financing certain economic development projects. Under the CID Act, the owners of the land within the boundaries of a proposed community improvement district may petition the City to request the creation of a community improvement district and to impose special assessments and/or community improvement district sales tax to pay for or reimburse the costs of a community improvement district project.

H. The Developer intends to request, and the City has agreed to consider, the creation of multiple community improvement districts to finance portions of the Developer Infrastructure Improvements, City Infrastructure Improvements, and the Project as more particularly set forth in Article III hereof.

I. Developer also intends to request, and the City agrees to consider, the issuance by the City of multiple series of industrial revenue bonds (“IRBs”) for the purposes of: (1) obtaining an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishings for certain commercial buildings and multifamily residential buildings within the Project; and (2) obtaining a partial abatement of ad valorem property taxes on certain multifamily residential buildings within the Project, all as more particularly set forth in Article IV hereof.

J. The Developer has also requested, and the City has agreed to, certain credits to the excise tax imposed by the City in order to offset a portion of the cost of the Developer Infrastructure Improvements as more particularly set forth in Section 2.06 below.

H. The parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the parties wish to enter into this Agreement to provide the necessary financing for the Project, Developer Infrastructure Improvements, and City Infrastructure Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Incorporation of Recitals. The parties understand and agree that the Recitals set forth above are hereby incorporated as though more fully set forth herein.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement which are not otherwise defined herein shall have the meanings set forth in the Annex of Definitions attached hereto.

Section 1.03. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

(a) The terms defined in the body of this Agreement and the attached Annex of Definitions include the plural as well as the singular.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted governmental accounting principles.

(c) All references herein to “generally accepted governmental accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(f) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 1.04. Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to the construction or interpretation of this Agreement.

ARTICLE II

DEVELOPMENT OF THE PROJECT

Section 2.01. Development of the Project Site. The City and Developer hereby agree that the Project consists of the development and improvement of the Project Site, presently expected to include the commercial and residential buildings, parking improvements, and other improvements generally depicted on **Exhibit B** attached hereto and including, without limitation, the City Infrastructure Improvements, and the Developer Infrastructure Improvements. The City and Developer further agree that the Project shall be developed, constructed, completed, and operated on the Project Site in substantial accordance and compliance with the terms and conditions of this Agreement and that the “Project” is presently expected to include the following:

(a) **Commercial Improvements.** The design, development, construction and completion of the following, along with associated parking, sidewalk, landscaping, open space, and infrastructure improvements:

(i) **Retail Space.** Approximately 455,500 square feet of first-class retail, restaurant, convenience store (with or without fuel and car wash), office, and service space which may include, among other concepts, specialty and boutique shops, restaurants, entertainment, anchor and junior anchor tenants, and other high-quality retail concepts.

(ii) **Retail Anchor.** Approximately 50,000 square feet of first-class retail anchor space labeled as building “H” and conceptually located as set forth on **Exhibit B** attached hereto.

(iii) **Hotels.** Approximately three (3) limited service hotels with national flags containing a total of approximately two hundred (200) rooms.

(b) **Residential Improvements.** The design, development, construction and completion of the following, along with associated parking, sidewalk, landscaping, open space, and infrastructure improvements:

(i) **Single-Family Residential Improvements.** Approximately 367 units of single-family residences, comprised of approximately 168 single-family villas and approximately 199 single-family homes, including an amenity center, swimming pool, and certain other amenities.

(ii) Multifamily Residential Improvements. Approximately eleven (11) buildings comprising a total of approximately 424 units of multifamily residences.

(c) Developer Infrastructure Improvements. The design, development and construction and completion of the Natural Gas Improvements, Street Improvements, and all other infrastructure improvements to and within the Project Site which the Developer is obligated to design, fund, and construct pursuant to this Agreement.

(d) City Infrastructure Improvements. The design, development and construction and completion of the Electric Improvements, Sewer Improvements, and Water Improvements to and within the Project Site which the City is obligated to design, fund, and construct pursuant to this Agreement.

Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the building number, type, size, location, and other aspects of the Project described above and depicted on **Exhibit B** attached hereto are conceptual in nature and may be adjusted by Developer in its sole discretion from time to time in response to market demand.

Section 2.02. Water Service. The City shall be responsible for providing water service to the Project Site through an agreement with WaterOne and constructing and financing the Water Improvements.

Section 2.03. Project Costs. Subject to the terms and conditions of this Agreement, Developer or the successor owners of portions of the Project Site shall be responsible for initially funding all costs to construct the Project except such costs as are attributable to the City Infrastructure Improvements, which shall be the sole responsibility of the City at the City's cost and expense, including, without limitation, any costs to signalize the intersections of 175th Street with Phase A Arterial or Clare Road.

Section 2.04. Relationship of the City and Developer. The performance of all activities to be performed by Developer hereunder shall be as an independent contractor and not as an agent of the City.

Section 2.05. Project Timing – Milestones. Developer, subject to the terms of Section 7.07 hereof, agrees to construct the Developer Infrastructure Improvements and certain numbers of units of single-family residences based upon the schedule set out and contained within **Exhibit G**, the Performance Milestones. In the event that Developer shall fail to meet any of the Performance Milestones set forth in **Exhibit G** that are the responsibility of Developer, then the City shall have the remedy set forth in Section 7.04(e) hereof; provided, however, that in the event the Developer fails to, subject to Section 7.07 hereof: (i) complete the Performance Milestones relating to either the Phase A Arterial or Phase B Arterial within six (6) months following the date for completing such milestone; or (ii) comply with the Performance Milestone relating to permits for single family residences and such failure lasts for at least twenty-four (24) months, then in each instance described in (i) or (ii), and following notice and failure to cure as set forth in Section 7.03(b), the City may pursue any remedy or remedies set forth in Article VII hereof. The City, subject to the terms of Section 7.07 hereof, agrees to construct the City Infrastructure Improvements and shall use commercially reasonable efforts to provide sanitary sewer, water, and electric service to the Project Site by May 1, 2021; provided, however, that so long as the City is diligently and continuously pursuing completion of the City Infrastructure Improvements, any failure to provide such utility service to the Project Site by such May 1, 2021 date shall not entitle the Developer to any remedy hereunder. Further, and subject to the terms of Section 7.07 hereof, the City agrees to construct the City Infrastructure Improvements based upon the schedule set out and contained within **Exhibit G**, the Performance Milestones. In the event that the City shall fail to meet any of the

Performance Milestones set forth in **Exhibit G**, then the Developer shall have the remedies set forth in Article VII hereof.

Section 2.06. Excise Tax. The City levies and collects an excise tax pursuant to Article 12, Section 5 of the Constitution of the State, Ordinance No. 2518 of the City, and K.S.A. 12-137 and 12-138 (the “Excise Tax”). Developer shall be obligated to pay the Excise Tax pursuant to Applicable Laws and Requirements as and when portions of the Project Site are platted; provided, however, that the Developer shall receive credits against the Excise Tax payable in connection with any portion of the Project Site in the amount of the reasonable and documented costs to design and construct the Phase A Arterial and Phase B Arterial. Notwithstanding anything herein to the contrary, no credit shall be extended to, and the City shall not have any obligation to pay or compensate, the Developer in excess of the total amount of Excise Tax calculable for platting the entirety of the Project Site.

Section 2.07. Indemnification. Developer agrees to indemnify, defend, and hold the City, its employees, agents and any independent contractors and consultants engaged by the City for work on this Project (each, a “City Indemnified Party” and collectively, the “City Indemnified Parties”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with: (i) the acquisition of the Project by Developer; (ii) the management, design, construction, development and completion of any portion of the Project by the Developer, its Affiliates, or its agents or contractors; (iii) the construction, use or occupation of the Project by Developer or anyone acting by, through or under the Developer; (iv) damage or injury, actual or claimed, of whatsoever kind or character to persons or property occurring or allegedly occurring in, on or about the Project Site; (v) any breach, default or failure to perform by the Developer under this Agreement; (vi) any act by an employee of the City at or on the Project Site which is within or under the control of the Developer or is performed by City employee at the request of the Developer or its, agents, employees or contractors; (vii) the Developer’s actions and undertaking in implementation of the Project or this Agreement; and (viii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor (such matters to be indemnified being the “City Indemnified Matters”). The parties further agree as follows:

(a) Developer’s indemnity obligation under this Section 2.07 for a City Indemnified Matter may be excused if and to the extent that such harm to the City was entirely the direct and proximate result of negligence or willful misconduct of the City or its officers, employees or agents acting in the capacity of an officer, employee or agent of the City at the time; however, Developer’s indemnity obligation under this Section 2.07 for a City Indemnified Matter may be reduced, but will not be excused, to the extent that such harm to the City was only partially a direct and proximate result of negligence or willful misconduct of the City or its officers, employees or agents acting in the capacity of an officer, employee or agent of the City at the time.

(b) Developer’s indemnity obligations under this Agreement include, but are not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Section 9601, *et seq.*), (ii) the Resource Conservation and Recovery Act (“RCRA”; 42 U.S.C. Section 6901 *et seq.*), (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, and any other Applicable Laws and Requirements at the Project Site. The foregoing

indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

(c) In the event any City Indemnified Matter arises, the City Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to a City Indemnified Party. After receipt of such notice, Developer may elect to defend, contest or otherwise protect a City Indemnified Party against any such City Indemnified Matter, at the cost and expense of Developer, utilizing counsel approved by a City Indemnified Party. The City Indemnified Party shall have the right, but not the obligation, to participate, at the City Indemnified Party's own cost and expense, in the defense thereof by counsel of the City Indemnified Party's choice. In the event that Developer after receiving such notice from the City Indemnified Party shall fail timely to defend, contest or otherwise protect a City Indemnified Party against such City Indemnified Matter, the City Indemnified Party shall have the right to do so, and (if such defense is undertaken by the City Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest or otherwise protect against such City Indemnified Matter), the City Indemnified Party may submit any bills for reasonable fees and costs received from its counsel to Developer for payment for services that were rendered no sooner than thirty (30) days after such notice is provided to Developer and, within thirty (30) business days after such submission of such bills for fees and costs, Developer shall transfer to the City Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

(d) A City Indemnified Party shall submit to Developer any settlement proposal that the City Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any City Indemnified Matter to the extent that Developer consents to such settlement. Neither Developer nor the City Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(e) Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce the City to enter into this Agreement. To the fullest extent permitted by law, a City Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the City Indemnified Party in payment of the damages suffered by it, as is necessary to protect the City Indemnified Party from loss. If such court action is successful, the City Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(f) Developer's indemnification obligations and the City's rights to indemnification under this Agreement with respect to events or circumstances that occurred or arose during the term of this Agreement shall survive the termination of this Agreement.

Section 2.08. Non-Discrimination. The Developer agrees that throughout the Term:

(a) The Developer shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry or age;

(b) In all solicitations or advertisements for employees, the Developer shall include the phrase, “equal opportunity employer,” or a similar phrase to be approved by the Kansas Human Rights Commission (“Commission”);

(c) If the Developer fails to comply with the manner in which the Developer reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

(d) If the Developer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Developer shall be deemed to have breached the Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

(e) The Developer shall include the provisions of Sections 2.08(a) through (d) above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

The Developer further agrees that throughout the Term, the Developer shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project.

ARTICLE III

CID FINANCING

Section 3.01. Anchor CID and Common CID. Developer shall submit, and the City shall reasonably consider, CID Petitions for the Anchor CID and each of the community improvement districts comprising the Common CID, which CID Petitions shall request the levy of a CID Sales Tax within the Anchor CID (the “Anchor CID Sales Tax”) and the Common CID (the “Common CID Sales Tax,” and together with the Anchor CID Sales Tax, is referred to as the “CID Sales Tax” or “CID Sales Taxes”) as described in Section 3.02 below. Developer, using private equity and debt, will initially advance all of the costs for the design, development and construction of the Common CID Improvements, which shall be reimbursable from the Common CID Sales Tax, and will initially advance all of the costs for the design, development and construction of the Anchor CID Improvements, which shall be reimbursable from the Anchor CID Sales Tax. Developer, subject to the terms and conditions of this Agreement, including without limitation the CID Caps set forth in Section 3.04 below, shall be reimbursed for Eligible Expenses from and to the extent of the CID Sales Tax proceeds collected during the Term or, at the request of the Developer, from the proceeds of CID Bonds. If the Developer has been reimbursed for all Eligible Expenses reimbursable from CID Sales Tax and/or the proceeds of CID Bonds prior to the date the Common CID expires or is terminated pursuant to this Agreement, the City shall be entitled to reimbursement from such remaining CID Sales Tax for the costs of City street and traffic control projects

with demonstrable benefit to the Commercial Improvements within the Project Site. Subject to Applicable Laws and Requirements, the Developer may “phase” the requests for separate community improvement districts comprising the Common CID, and the City shall reasonably consider each such request; provided, however, that no CID shall have a term commencing later than January 1, 2029, or expiring later than December 31, 2050. The City acknowledges that without the City’s creation and administration of the Common CID and Anchor CID as described herein, Developer would not have entered into this Agreement, as carrying out Developer’s obligations hereunder would not be financially feasible.

Section 3.02. CID Sales Tax. The City hereby agrees that the CID Improvements may be financed and reimbursed with Pay-As-You-Go CID Financing or the proceeds of CID Bonds, in each case payable from revenues received from the imposition of CID Sales Taxes in the amount of one percent (1%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers’ Sales Tax Act (K.S.A. 79-3601 *et seq.*) within the Anchor CID and each of the separate community improvement districts comprising the Common CID. The Developer agrees to provide to the Kansas Department of Revenue (the “DOR”) a list of tenants within each of the CIDs within the timeframes required by the DOR, so that the DOR can notify tenants within the CIDs of their requirement to collect a CID Sales Tax beginning on those certain dates agreed to by the City and the Developer. At the time each list of tenants is provided to the DOR, the Developer shall also provide a copy to the City. The term of collection for the Anchor CID Sales Tax shall expire on the later of, as applicable: (i) the date all Eligible Expenses relating to the Anchor CID Improvements have been reimbursed through Pay-As-You-Go CID Financing; or (ii) the date of redemption of any CID Bonds which finance the Anchor CID Improvements. The term of collection (the “CID Collection Period”) for each of the community improvement districts comprising the Common CID shall be twenty-two (22) years unless terminated sooner pursuant to this Agreement. At the end of the CID Collection Period for each CID, the parties understand and agree that each CID shall thereafter terminate, and the applicable CID Sales Tax shall terminate and no longer be levied or collected within such CID.

Section 3.03. CID Sales Tax Funds. During the Term, all CID Sales Tax proceeds generated within each separate CID and received by the City from DOR shall be deposited into a corresponding separate CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State and this Agreement. The City shall establish and maintain separate CID Sales Tax Funds for the Anchor CID and each of the community improvement districts comprising the Common CID.

Section 3.04. Pay-As-You-Go CID Financing. The parties hereby agree that the proceeds from the CID Sales Tax shall be disbursed by the City quarterly from each of the separate CID Sales Tax Funds on a pay-as-you-go basis (“Pay-As-You-Go CID Financing”), to reimburse Developer for Eligible Expenses, if and to the extent that (i) there are CID Sales Tax proceeds in the applicable CID Sales Tax Fund, (ii) Developer has fully satisfied all of the conditions set forth in Section 3.05 hereof, (iii) the term of the applicable CID Sales Tax has not yet expired, (iv) Developer has not already been reimbursed for Eligible Expenses in an amount equal to the applicable CID Cap (as defined below), and (v) Developer is not in default under the terms and conditions of this Agreement beyond any applicable notice and cure periods provided herein. The parties further agree as follows:

(a) The Anchor CID Sales Tax available to Developer for reimbursement of Eligible Expenses relating to the Anchor CID Improvements shall in no event exceed \$8,000,000 (the “Anchor CID Cap”). Once Developer has received an amount equal to the Anchor CID Cap for reimbursement of Eligible Expenses relating to the Anchor CID Improvements through Pay-As-You-Go CID Financing, and once any CID Bonds financing such improvements are redeemed, the parties understand and agree that the Anchor CID

shall thereafter terminate, and the Anchor CID Sales Tax shall terminate and no longer be levied or collected within the Anchor CID.

(b) The Common CID Sales Taxes available to Developer for reimbursement of Eligible Expenses attributable to the Common CID Improvements shall in no event exceed \$11,000,000 (the “Common CID Cap”). Once Developer has received an amount equal to the Common CID Cap for reimbursement of Eligible Expenses relating to the Common CID Improvements through Pay As You Go CID Financing, or once any CID Bonds financing such improvements are redeemed, the parties understand and agree that the Common CID Sales Taxes shall thereafter be available to reimburse certain City expenditures as set forth in Section 3.01 hereof.

(c) Developer shall not receive any reimbursements from Pay-As-You-Go CID Financing unless and until the conditions precedent set forth in Section 3.05 have been fully satisfied related to the relevant CID (i.e., the Anchor CID or one of the CIDs that constitute the Common CID) as determined by City in its reasonable discretion, or as waived in whole or in part by the City in its sole discretion.

Section 3.05. Conditions Precedent to Reimbursements. Developer hereby understands and agrees that it shall not receive any reimbursements for Eligible Expenses unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its reasonable discretion or waived in whole or in part by the City in its sole discretion:

(a) City has approved Certificates of Expenditure for such CID Improvements; and

(b) Developer shall be in full compliance with the terms and conditions of this Agreement and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder.

Section 3.06. CID Bond Financing. Notwithstanding anything herein to the contrary, and subject to the following terms and conditions, the City shall consider issuing CID Bonds if requested by the Developer to finance the costs of the Anchor CID Improvements and/or the Common CID Improvements:

(a) Each such series of CID Bonds shall be purchased by the Developer and shall not be sold or transferred by the Developer;

(b) The City shall engage a bond trustee to serve as paying agent for each series of CID Bonds;

(c) The minimum denomination for any series of CID Bonds issued by the City shall be \$100,000 unless an exception is approved by the Governing Body of the City;

(d) The bonds shall be structured as supersinkers so that CID Sales Tax revenues received in excess of debt service will be used to pay down principal, and the City may, in its discretion, size and structure each such series of CID Bonds to prioritize repayment of taxable bonds, if applicable;

(e) Bond Counsel provides to the City an opinion to the effect that the CID Bonds have been validly issued under State law and, if applicable, that interest on the CID Bonds, or any series of CID Bonds, is exempt from State and federal income taxation, subject to the standard exceptions;

(f) The Developer is not then in default under this Agreement; and

(g) The interest on each series of CID Bonds shall be 8.50% unless Bond Counsel determines that interest on such series of bonds is excludable from gross income for federal income tax purposes, in which case the interest on such series of CID Bonds shall be 5.50%.

Section 3.07. Payment of CID Administrative Fee. As and when there are sufficient CID Sales Tax revenues from the CIDs to pay the CID Administrative Fee, Developer hereby understands and agrees that such CID Administrative Fee shall have first priority to available funds in the CID Sales Tax Fund. The CID Administrative Fee shall be payable not less than annually at the times and in the manner established per Section 9.01 hereunder or, in the event any CID Bonds are issued, at the times and in the manner set forth in the bond documents for such CID Bonds.

Section 3.08. CID Reimbursement. In no event will the reimbursement to the Developer described hereunder exceed the CID Caps.

Section 3.09. Certificate of Expenditures. In connection with the Eligible Expenses for the CID Improvements, Developer shall certify all costs and expenditures in accordance with the following:

(a) The Developer shall submit to the City a Certificate of Expenditure in the form attached hereto as **Exhibit H** setting forth the amount for which reimbursement is sought and an itemized listing of the related Eligible Expenses. Prior to or concurrently with the first Certificate of Expenditure submitted by Developer to the City, the Developer shall submit plan documentation to assist the City in reviewing the Certificate of Expenditures. Such documentation shall include, but not be limited to:

(i) A scalable “General Layout” plan sheet showing the general layout and location of the Eligible Expenses. Non-eligible items shall be clearly differentiated from eligible items.

(ii) A summary of plan quantities delineating the eligible from non-eligible items.

(iii) Copies of certified bid tabulations or contracts verifying the contractor’s bid on eligible items. Such tabulations or contracts must clearly differentiate items by eligible and non-eligible items.

(b) Each Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers and other evidence as the City shall reasonably require to document appropriate payment and shall include an overall cost summary, as well as a cost summary for each division of work (i.e., grading, erosion control, roadway, sanitary sewer and storm sewer). The cost breakdown shall include the quantity, unit price and price extension for each eligible item requested for reimbursement.

(c) The City reserves the right to have its engineer, City staff or other agents or employees inspect all work in respect of which a Certificate of Expenditure is submitted, to examine the Developer’s and other’s records relating to all costs of CID Improvements to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof. The Developer hereby agrees to pay all actual and verifiable expenses incurred by the City pursuant to this subsection (c), which shall be deemed Eligible Expenses and reimbursable with CID Sales Tax to Developer.

(d) The City shall have forty-five (45) calendar days after receipt of any Certificate of Expenditure to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certificate of Expenditure directly relates to the CID Improvements; (2) the expense was incurred; (3) Developer is not in default under this Agreement beyond any applicable notice and cure periods provided herein; (4) the expense is not prohibited by the terms and conditions of this Agreement, then the City shall approve the Certificate of Expenditure and reimburse the Developer for financing the cost of the CID Improvements pursuant to the terms of this Agreement. If the City disapproves of the Certificate of Expenditure, the City shall notify the Developer in writing of the reason for such disapproval within such forty-five (45) day period. If the City disapproves of some but not all of the costs included within the Certificate of Expenditure, the costs that are not disapproved shall be approved by the City at such time. Disapproved costs may be re-submitted on a subsequent Certificate of Expenditure at any time with such additional information as required to satisfy the terms hereof.

(e) During the Term, the Developer shall endeavor to submit Certifications of Expenditures for those expenditures made in connection with the CID Improvements on a quarterly basis.

Section 3.10. Reimbursement Priority. All payments or reimbursements of whatever kind from the City to the Developer under this Agreement shall be made in the following priority:

(a) First, to the City, to the extent permitted by Applicable Laws and Requirements, as payments by the Developer for (i) all amounts delinquently due or owing (including all taxes, fees, or fines), including any interest and penalty thereon, by the Developer to the City under this Agreement, under any other agreement with the City, or under any Applicable Laws and Requirements; (ii) all actual out-of-pocket costs incurred (and any interest or penalty thereon) by the City in entering into, operating under, or enforcing this Agreement, including without limitation the Administrative Fee and reasonable attorney's fees; (iii) indemnification of the City for any indemnity obligation owed by Developer (or its Affiliate) to the City, and any interest or penalty thereon; and (iv) any reimbursement due to the City on account of any prior overpayment or over-reimbursement to Developer under this Agreement, under any other agreement with the City, or under any Applicable Laws and Requirements; and

(b) Second, to the Developer for actual amounts to which the Developer is entitled by the other provisions of this Agreement.

ARTICLE IV

INDUSTRIAL REVENUE BONDS

Section 4.01. Industrial Revenue Bonds. Subject to all Applicable Laws and Requirements, and subject further to compliance by Developer with all City requirements for the issuance of industrial revenue bonds ("IRBs"), the Developer has requested, and the City shall reasonably consider, IRB financing to obtain: (i) an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing for the Anchor CID Improvements; and (ii) an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishing, together with an abatement of ad valorem taxes for the Multifamily Residential Improvements. All expenses related to the issuance of such IRBs, including, but not limited to, the City's application fee, the City's origination fees (which will be determined as set forth on **Schedule 4.01**

attached hereto), and the fees and expenses of the City's Bond Counsel, shall be the responsibility of the Developer. Each series of IRBs issued pursuant to this Agreement shall be purchased by the Developer. The City acknowledges that without the City's creation of the IRBs upon the terms set forth herein, Developer would not have entered into this Agreement, as carrying out Developer's obligations hereunder would not be financially feasible.

Section 4.02. Multifamily Residential Abatements. The Developer has requested, and the City shall reasonably consider, abatements of seventy-five percent (75%) of the ad valorem taxes on the Multifamily Residential Improvements financed with one or more series of IRBs. Each such abatement shall be: (i) subject to the terms of a PILOT Agreement between the City and the Developer in the form attached hereto as **Exhibit I**; (ii) for a term of ten (10) years, with the last abatement term starting no later than the 2030 tax year (payable December 2030 and May 2031) and ending with taxes payable December 2039 and May 2040. In no event shall any abatement referred to under this Agreement have the effect of abating any mill levy which cannot be abated pursuant to State law or abating any special assessment.

ARTICLE V

ASSIGNMENT AND TRANSFER

Section 5.01. Transfers and Assignments by Developer. Developer may freely convey and transfer some or all of the Project Site without the prior approval of the City's Governing Body; provided, however, that the rights, duties and obligations hereunder of the Developer may not be assigned, conveyed or transferred, in whole or in part, to another entity, without the prior approval of the City, in its reasonable discretion. Such approval may be provided by the City Administrator; provided, however, that the City Administrator may, in his or her discretion, seek such approval from the Governing Body of the City. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of this Agreement being transferred. Notwithstanding anything in this Agreement to the contrary, Project Site Owner may convey the Project Site in one or more transactions to the Developer without notice to or consent from the City.

No City consent shall be required for any assignment described above where it is a security interest granted to secure indebtedness to any construction or permanent lender or where the assignee is Developer's Affiliate (but in such case Developer shall not be released from the obligations assigned to its Affiliate unless until the City approves such release, which shall not be unreasonably withheld or delayed).

Developer shall, at Developer's sole cost, promptly prepare all documents necessary to memorialize any assignment permitted under this Article V. Where City consent is required hereunder for an assignment, Developer shall, at Developer's sole cost, promptly prepare all documents necessary to memorialize any assignment approved under this Article V, and Developer shall reimburse the City for all costs and expenses (including reasonable attorneys' fees) which the City incurs in a pursuit of or as a result of reviewing and approving of such assignment. Following any assignment permitted under this Article V of all or any portion of Developer's rights relating to the Multifamily Residential Improvements, Developer shall thereafter be relieved of the obligations relating to the rights assigned thereunder.

ARTICLE VI

USE AND OPERATION OF THE PROJECT

Section 6.01. Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon the later of: (i) the date of the last disbursement of CID Sales Tax to Developer or its permitted assigns pursuant to the terms and conditions of this Agreement; (ii) the date that the last CID Bond is redeemed; or (iii) the date that the last IRB is redeemed (the “Term”). Notwithstanding the foregoing, the City hereby agrees that at any time following Developer’s completion of the Phase A Arterial and Phase B Arterial, Developer may terminate this Agreement by thirty (30) days prior written notice to the City. Upon any such termination by Developer, the parties hereby agree that (i) the City shall terminate any or all of the CIDs and/or any or all of the CID Sales Taxes, and Developer shall have no further rights to any proceeds or reimbursements therefrom, and (ii) neither party shall have any further obligations under this Agreement.

Section 6.02. Use and Operation. Developer covenants that at all times during the Term it will, at its expense:

(a) Conduct its business at all times in a dignified quality manner and in conformity with the industry standards for similar facilities and to help establish and maintain a high reputation for the Project.

(b) Perform its duties to maintain the Project, or cause the same to be maintained, as set forth in Section 6.03 hereof.

(c) Developer hereby understands and agrees that the nature of the commercial facilities to be developed pursuant to this Agreement was critical to the approval of the same. Accordingly, the parties hereby agree that the following uses shall be prohibited within the Project Site:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the Project or Project Site.

(ii) A gas station, stand-alone car wash, or truck stop; provided, however, this prohibition shall not be applicable to a convenience store, with or without fuel or car wash, or a first-class stand-alone full-service carwash.

(iii) A facility primarily used as a storage warehouse or freight terminal; provided, however, this prohibition shall not be applicable to a climate-controlled ministorage facility with enclosed, interior access to storage units.

(iv) Any pawn shop or flea market.

(v) Any store primarily selling tobacco products or vaping or tobacco-smoking paraphernalia.

(vi) Pay-day or title loan facilities.

(vii) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building within the Project.

(viii) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion within the Project to determine its own selling prices nor shall it preclude second-hand sales or the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(ix) Any central laundry, or laundromat; provided, however, this prohibition shall not be applicable to a drop off and pickup facility, or a central laundry or laundromat that complies with CERCLA, RCRA and other Applicable Laws and Requirements (as defined herein).

(x) Any automobile, truck, trailer or recreational vehicle with outside sales, leasing, or display unless (i) approved by the City, or (ii) in conjunction with temporary promotions, displays and other similar marketing activities, or (iii) for the sale of luxury vehicles displayed only within an indoor showroom for purposes of taking orders for cars, not storing inventory of any kind, subject, however, to compliance with all Applicable Laws and Requirements.

(xi) Any establishment selling or exhibiting sexually oriented materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially nude dancers or wait staff; except that this provision shall not be deemed to preclude the operation within the Project of either a nationally or regionally recognized book store, or a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xii) Any “street marketing” of any kind, including without limitation, inflatable signs or characters, people dressed in costume, holding signs or wearing sandwich-boards or otherwise advertising directly to pedestrians or vehicular traffic.

(xiii) Any precious metals facilities; provided, however, this prohibition shall not apply to jewelry stores.

(xiv) Any use not permitted by the applicable zoning ordinance of the City. The foregoing list of prohibited uses is not intended to supplant the requirements and/or prohibition of uses stated within the City’s Code and/or the City’s zoning ordinance.

The Governing Body of the City may grant variances to the restrictions set forth in this Section 6.02(c) from time to time in its sole and absolute discretion. Within sixty (60) days of the Effective Date, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 6.02(c), memorialize the restrictions set forth in Section 6.03 below, and provide notice of the proposed CIDs, and record the same against the real property within the Project Site, which restrictions shall be effective and run with the land for the Term of this Agreement.

Section 6.03. Maintenance and Use. During the Term, Developer shall cause any portion of the Project owned by Developer or its Affiliates to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated single-family,

multifamily, retail and commercial space in the greater metropolitan Kansas City area, and will make, or cause to be made, all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations within the Project. Nothing in this Section 6.03 shall preclude Developer from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements and this Agreement.

Section 6.04. Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any government authorities applicable to the conduct of their business and operations and the ownership of the Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any government authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement.

Section 6.05. Payment of Taxes and Liens. The Parties hereby agree as follows:

(a) During the Term of this Agreement, Developer and its Affiliates shall pay when due all real estate taxes and assessments on the property it owns within the City. In the event that the Developer shall fail to pay all such applicable real estate taxes and assessments, the parties understand and agree that the City may suspend all reimbursements of Eligible Expenses through Pay-As-You-Go CID Financing during any time that such real estate taxes and assessments on the property the Developer (or its Affiliate) owns within the City remain unpaid. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer or its Affiliates from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer or its Affiliates shall pay any and all amounts that are contested under protest (but only if such taxes are otherwise due and payable at such time) while any such proceedings are pending. The Developer and any Affiliates shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's or such Affiliates' property within the Project Site; provided, however, that Developer's failure to comply with such notice requirement shall not entitle the City to terminate this Agreement as set forth in Section 7.04(a).

(b) Developer further agrees that no mechanics' or other liens shall be established or remain against the Project or the property within the Project Site, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 6.06. Licenses, Permits, and Fees. Developer hereby recognizes, stipulates and agrees that in the design, construction, completion, use or operation of the Project, Developer, its general contractor, and all other developers of any portion of the Project Site, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, shall be responsible for all standard City fees and charges including, without limitation, charges for utility system development, building permits, and inspections but specifically excluding Excise Tax attributable to the Project Site. Further, nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

Section 6.07. Reserved.

Section 6.08. Access and Coordination of Work. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the portions of the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement, including to perform the City's obligations hereunder, or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Nothing contained in this Section 6.08 shall restrict or impede the right of the City to enter the Project Site pursuant to any Applicable Laws and Requirements. The parties further acknowledge and agree that completion of the City Infrastructure Improvements in the time and manner described in this Agreement will require coordination and cooperation between the parties and will further require that the Developer timely provide access to the Project Site, convey necessary easements, and complete grading and other preliminary improvements prior to the City's performance of certain work (such easements, grading, and improvements, to be in accordance with the layout of the Sewer Improvements, Water Improvements, and Electric Improvements, as set forth on **Exhibits C, D, and E** hereof, respectively, unless the parties agree otherwise in writing). The parties agree to coordinate and cooperate as described in this section to facilitate completion of the City Infrastructure Improvements.

Section 6.09. Periodic Meetings with the City. From the Effective Date until substantial completion of the Project, Developer hereby agrees to meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project. At any time during the Term of this Agreement, Developer hereby agrees to reasonably respond to requests for information from the City or its representatives about the Project or the Project Site.

Section 6.10. Civic and Community Participation. During the Term of this Agreement, Developer agrees to actively participate in the civic, charitable, educational, philanthropic and economic development of Gardner. Accordingly, at a minimum, Developer shall at all times be a dues-paying member in good standing with the Gardner Edgerton Chamber of Commerce and an investor in the Southwest Johnson County Economic Development Corporation.

Section 6.11. Signage. Developer agrees that the monument signage for the commercial portion of the Project shall include a reference to "Gardner, Kansas" or include some other similar reference to the City.

Section 6.12. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights, powers and discretion of the City, including the Governing Body of the City, to act in its capacity as a public body.

Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

Section 7.02. Developer's Remedies Upon Default by the City. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote, punitive or consequential damages. The City's liability hereunder shall also be limited by Applicable Laws and Requirements. Further, in the event the City fails to complete the City Infrastructure Improvements in accordance with the Project Milestones, Developer shall have the option to: (i) de-annex all or a portion of the Project Site from the city limits of the City; or (ii) complete, or cause to be completed, the unfinished City Infrastructure Improvements. In the event Developer undertakes such completion of the unfinished City Infrastructure Improvements pursuant to item (ii), the City shall cooperate with Developer's assumption of such unfinished improvements and compensate the Developer for all associated expenses to the extent such expenses are documented and demonstrated to be reasonable.

Section 7.03. Default by Developer. Developer shall be in default under this Agreement if:

- (a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within ten (10) business days after the City has given Developer written notice specifying such default; or
- (b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or
- (c) Without limiting the generality of the foregoing, Developer shall assign or transfer the Project and/or this Agreement in violation of the terms and conditions set forth in Article V; or
- (d) Developer shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is

appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within thirty (30) days; or any execution or attachment shall issue against Developer whereupon the Project Site, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subsection being deemed a default under the provisions of this Agreement);

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days of notice from the City; or

(f) Developer or an Affiliate breaches any PILOT Agreement between the City and the Developer relating to the Multifamily Residential Improvements and fails to remedy such breach within the time period specified thereunder.

Section 7.04. City's Remedies Upon Default by Developer. Upon the occurrence and continuance of a Developer default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may (i) refuse to approve any further Certificates of Expenditures and make any further disbursements of CID Sales Tax unless and until such default is cured by the Developer, and/or (ii) terminate the CID and/or the CID Sales Tax, in which case Developer shall have no further rights to any proceeds or reimbursements therefrom, and/or (iii) terminate this Agreement. The rights and remedies reserved by the City under this Section 7.04 shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

(b) The City may set-off any amounts due or owing from the Developer to the City (including without limitation any amounts under or referred to in Section 3.10(a) above) against any payment(s) due or owing from the City to the Developer.

(c) The City may also exercise the remedies specifically provided in any Article, Section or subsection of this Agreement.

(d) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement (except that in no event shall Developer be compelled to design or construct any improvements), to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default; provided, however, that Developer's liability shall be limited to direct damages and in no circumstance shall include liability for punitive or consequential damages.

(e) In the event the Developer fails to meet one or more of the Developer's obligations in accordance with the Project Milestones, and the Developer does not correct such failure within thirty (30) days of notice thereof from the City, the Developer shall pay the City the sum of \$15,000 on the first day of each month after expiration of such thirty (30) day period until the Developer has remedied such failure. (By way of illustration only, if Developer's first twelve-month deadline to obtain single-family residential building permits

is June 15, 2022, the City provides notice of this failure on June 16, 2022, the Developer does not remedy such failure by July 16, 2022, but the Developer does remedy such failure by September 15, 2022, then Developer will pay the City \$15,000 on August 1 and \$15,000 on September 1, paying \$30,000 in total.)

Section 7.05. Legal Actions.

(a) Forum. Any legal actions related to or arising out of this Agreement, including any claims for which concurrent federal jurisdiction exists, must be filed and maintained in the District Court of Johnson County, Kansas; provided, however, that any actions related to or arising out of this Agreement for which exclusive federal jurisdiction exists must be filed and maintained in the Federal District Court in the District of Kansas. Developer shall not seek or be entitled to any dismissal or transfer in any action properly filed or maintained in accordance with the preceding forum selection provisions for any reason premised upon the inconvenience of either such forum.

(b) Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process.

(i) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer or Developer's registered agent shall be made by personal service upon an officer or agent of the Developer or Developer's registered agent and shall be valid whether made within or without the State of Kansas or in any other manner permitted by Kansas law or permitted by the law of the jurisdiction where service is made.

Section 7.06. Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 7.07. Excusable Delays; Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party such as but not limited to: default of other party; war; insurrection; strikes; labor shortages; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform ("Excusable Delays").

(b) The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. If and when any such Excusable Delays occur and impact the performance of this Agreement by the City or the Developer, such delayed Party shall provide notice thereof to the other Party, and the delayed Party may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. In the case of any extension sought by the delayed Party for any other reason which will cause a failure to timely complete a portion of the Project as set forth on Exhibit G hereto, such extension shall only be granted with the approval of the other Party to this Agreement, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse either Party from any obligation of such Party to pay money hereunder, nor shall this Section excuse either Party from performance of its respective obligations because of a lack of funds or inability to obtain financing. Further, nothing herein shall excuse Developer from performance of its obligations hereunder due to the failure of the Developer to obtain fee title to all or any portion of the Project Site from the Project Site Owner.

ARTICLE VIII

RESERVED

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Expenses and CID Administrative Fee. Reference is hereby made to the Funding Agreement entered into by and between the City and the Developer prior to the Effective Date. The parties hereby agree that the Funding Agreement shall survive the execution of this Agreement and the formation of the CIDs, and the Developer hereby further agrees that to any extent not otherwise covered by the Funding Agreement, Developer shall be responsible for and pay, within thirty (30) days of receipt of an invoice, the reasonable fees of the City's attorneys and consultants incurred in connection with the creation, amendment and implementation of the CIDs and this Agreement (including the negotiation of this Agreement), other related agreements, and any amendments thereto, and in connection with the review of certified expenditures for Eligible Expenses and the reimbursement of such Eligible Expenses, pursuant to the terms of Section 3.01. Additionally, the CID Sales Tax shall be used to pay the CID Administrative Fee. The CID Administrative Fee shall be due on the date the CID Sales Tax is received by the City from DOR (provided that the CID Act permits payment directly from the CID Sales Tax, and if not, within thirty (30) days of demand therefor by the City). The amount of \$50,000, paid by Developer under the Funding Agreement to the City, and any other amounts paid by Developer to the City under this Section 9.01, shall be deemed an Eligible Expense and reimbursable to Developer with CID Sales Tax and/or the proceeds of CID Bonds.

Section 9.02. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 9.03. Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(a) Organization. Developer is a Kansas limited liability company, duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State of Kansas and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(b) Authority. The execution, delivery and performance by Developer of this Agreement are within such party's powers and have been duly authorized by all necessary action of such party.

(c) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(d) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(e) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

(f) Veracity of Certificates and Information Provided. All information provided to the City by Developer, its Affiliates, its agents, or its contractors in any way related to the Project or this Agreement (including any information provided in the formation or the performance of this Agreement, and including any information provided in or related to any Certificate of Expenditure, any certificate of insurance, or any request for approval under Article V above, or any inspection under Section 3.09 above or Section 9.07 below) is true, accurate, and complete to the best of Developer's actual knowledge. Developer has provided and will continue to provide the City with all information necessary to make any information previously provided by Developer not misleading.

Section 9.04. Time of Essence. Time is of the essence of this Agreement. The City and Developer will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 9.05. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, upon official action of the City's Governing Body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest.

Section 9.06. Immunity of Officers, Employees and Members of the City and Developer. No personal recourse shall be had for the payment of the Pay-As-You-Go CID Financing or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Developer, or any successor-in-interest of Developer under this Agreement, for any default or breach by the City.

Section 9.07. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the Project as pertinent to the City's verification of Developer's performance of Developer's obligations hereunder.

Section 9.08. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the parties.

Section 9.09. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

Section 9.10. Kansas Law; Conflicts with Ordinance. This Agreement shall be construed in accordance with the laws of the State of Kansas. To the extent there is a conflict between this Agreement and any CID Ordinance, such CID Ordinance shall be controlling.

Section 9.11. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 9.12. Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 9.13. Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

Section 9.14. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(a) To the Developer:

Travis Schram, President
Grata Development, LLC
6300 W. 143rd Street, Suite 200
Overland Park, Kansas 66223

With copies to:

Curtis Petersen, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

(b) To the City:

Jim Pruetting, City Administrator
City of Gardner
120 E. Main Street
Gardner, KS 66030

With copies to:

Ryan Denk, Esq.
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

and

Tyler Ellsworth, Esq.
Kutak Rock LLP
2300 Main Street, Suite 800
Kansas City, Missouri 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by certified mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 9.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.16. Entire Agreement. Together with the exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

Section 9.17 Reserved.

Section 9.18. Survival. Notwithstanding the termination of this Agreement, Developer's obligations of insurance and indemnification set out in Article II shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during Term.

Section 9.19. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 9.20. Tax Implications. The Developer acknowledges and represents that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (b) the Developer is relying solely upon its own tax advisors in this regard.

Section 9.21. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

Section 9.22. Joint and Several Liability. If more than one entity shall comprise the "Developer" hereunder, then the obligations hereunder shall be joint and several, and each of those entities shall be jointly and severally liable to the City hereunder.

Section 9.23. Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future Governing Body of the City in a manner prohibited by the laws of the State of Kansas.

Section 9.24. Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1100 *et seq.*), the Budget Law (K.S.A. 79-2935 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

Section 9.25. Effective Date. Submission of any drafts of this Agreement by one party to another is not intended by any party to be an offer to enter into a legally binding contract regarding the subject matter hereof, and the parties shall be legally bound by this Agreement only after all parties have fully executed and delivered to each other their respective counterparts of this Agreement. Upon delivery of all counterparts, this Agreement shall be effective as of the Effective Date first written above.

[remainder of page left blank intentionally]

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____
Travis Schram
President

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

On this _____, 2020, before me, a Notary Public in and for said County and State, came Travis Schram, President of Grata Development, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such persons duly acknowledged the execution of the same to be the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public in and for said County and State

My Commission Expires:

JOINDER BY PROJECT SITE OWNER

Day3, LLC is currently the fee owner of the Project Site and hereby affirms: (a) Project Site Owner's execution of this Agreement to allow for Developer's construction of the Project and to create certain obligations that run with the land; and (b) its intention to convey the Project Site to Developer to allow for Developer's fulfillment of its obligations under this Agreement.

DAY3, LLC,
a Missouri limited liability company

By: Travis Schram, Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

On this _____, 2020, before me, a Notary Public in and for said County and State, came Travis Schram, Manager of Day3, LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such persons duly acknowledged the execution of the same to be the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public in and for said County and State

My Commission Expires:

ANNEX OF DEFINITIONS

The following terms have the following meanings:

“Affiliate” means a person or entity that is controlled by Developer (which shall include serving as managing member for such entity), which controls Developer, or that is under common control with Developer. Control shall be defined as possessing the right to make decisions binding upon the party subject to such control.

“Agreement” means this First Amended and Restated Development Agreement, as the same may be amended from time to time in accordance with the terms and conditions hereof.

“Anchor CID” means the CID established pursuant to the CID Act and Article III hereof to pay costs associated with construction of the Anchor CID Improvements.

“Anchor CID Cap” means, with respect to the Anchor CID, the limitations on the amount of Anchor CID Sales Tax available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.04 hereof.

“Anchor CID Improvements” means improvements within the Anchor CID, including the Retail Anchor, the costs of which are Eligible Expenses and reimbursable hereunder.

“Anchor CID Improvement Costs” means the costs for construction and completion of the Anchor CID Improvements.

“Anchor CID Sales Tax” means the CID Sales Tax in the amount of one percent (1.0%) levied pursuant to the CID Act on retail sales generated within the Anchor CID.

“Applicable Laws and Requirements” shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by government authorities (including the City), and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the CID Act, the Kansas Cash Basis Law (K.S.A. 10-1100 *et. seq.*), Budget Law (K.S.A. 75-2935 *et. seq.*), and the Kansas False Claims Act (K.S.A. 75-7501 *et seq.*).

“Bond Counsel” means Kutak Rock LLP, Kansas City, Missouri, or such other nationally recognized firm of attorneys selected by the City with expertise in community improvement districts in the State.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* as referred to in Section 2.07(b) hereof.

“Certificate of Expenditure” means a certificate of expenditure to be submitted to the City by Developer pursuant to Section 3.09 above for seeking reimbursement of Eligible Expenses, the form of which is attached hereto as **Exhibit H**.

“CIDs” means, collectively, the Common CIDs and the Anchor CID.

“CID Act” means K.S.A. 12-6a26 through 12-6a36 and all additions and amendments thereto.

“CID Administrative Fee” means an amount equal to three percent (3%) of the CID Sales Tax proceeds deposited into the CID Sales Tax Funds established hereunder, calculated on an annual basis during the Term but not to exceed \$50,000 per year.

“CID Bonds” means the special obligation community improvement district revenue bonds issued pursuant to the CID Act and Article III hereof.

“CID Caps” means, collectively, the Anchor CID Cap and the Common CID Cap.

“CID Collection Period” means the period that commences on the date that each CID Sales Tax is first imposed and concluding upon the date which is the earlier of the following: (a) the date that Developer has been reimbursed for all Eligible Expenses by Pay-As-You-Go CID Financing and all CID Bonds have been retired, or (b) that date which is twenty two (22) years from the date that the CID Sales Tax is first imposed, as set forth in Section 3.04 hereof.

“CID Sales Tax” or “CID Sales Taxes” means the tax or taxes authorized by K.S.A. 12-6a31 and amendments thereto, and as more particularly described in Article III hereof, including the Anchor CID Sales Tax and the Common CID Sales Taxes.

“CID Sales Tax Fund” and “CID Sales Tax Funds” mean, as applicable, each separate fund established by the City for deposit of each separate CID Sales Tax received from the State collected within each CID and that is used to finance the CID Improvements pursuant to the CID Act as set forth in Article III hereof.

“City” means the City of Gardner, Kansas.

“City Indemnified Parties” means the City, its employees, agents, independent contractors and consultants, collectively for purposes of the indemnification provisions set forth in Section 2.07 hereof.

“City Infrastructure Improvements” means, collectively, the Electric Improvements, Sewer Improvements, and Water Improvements to and within the Project Site which the City is obligated to design, fund, and construct pursuant to this Agreement.

“Commercial Improvements” means, collectively, the improvements described in Section 2.01(a), including subsections 2.01(a)(i), (ii), and (iii).

“Commission” means the Kansas Human Rights Commission as referred to in Section 2.08(b) hereof.

“Common CID Cap” means, with respect to the Common CID, the limitations on the amount of Common CID Sales Taxes available to Developer for reimbursement of Eligible Expenses as set forth in Section 3.04 hereof.

“Common CIDs” means one or more community improvement districts established pursuant to the CID Act and Article III hereof to pay for or reimburse Common CID Improvement Costs and any other costs as specified herein; provided, however, that the Common CIDs shall not include or overlap with the Anchor CID.

“Common CID Improvements” means that portion of the Project comprised of the Natural Gas Improvements, the Street Improvements, and the City Infrastructure Improvements, the costs of which are Eligible Expenses and reimbursable hereunder.

“Common CID Improvement Costs” means the costs for design, construction, and completion of the Common CID Improvements.

“Common CID Sales Taxes” means the CID Sales Taxes in the amount of one percent (1.0%) levied pursuant to the CID Act on retail sales generated within the Common CIDs.

“Developer” means Grata Development, LLC, a Kansas limited liability company.

“Developer Infrastructure Improvements” means, collectively, the Common CID Improvements (less the City Infrastructure Improvements) and all other infrastructure improvements to and within the Project Site which the Developer is obligated to design, fund, and construct pursuant to this Agreement.

“DOR” means the Kansas Department of Revenue as set forth in Section 3.02.

“Effective Date” means the date set forth on the first page of this Agreement.

“Electric Improvements” means the electric transmission network and related appurtenances depicted on **Exhibit E** attached hereto to accommodate all of the uses identified in Section 2.01 hereof. The Electric Improvements exclude any connections between the transmission network depicted on **Exhibit E** and such structures, facilities, and improvements as are constructed on the Project Site.

“Eligible Expenses” means those Common CID Improvement Costs and Anchor CID Improvement Costs that are “costs” or a “project” (as defined in the CID Act and as authorized for reimbursement under this Agreement) and thus eligible for reimbursement with CID Sales Tax proceeds under the CID Act and this Agreement and subject to the CID Caps, and any other costs that are reimbursable to Developer hereunder; provided, however, that such Eligible Expenses shall expressly exclude any Common CID Improvement Costs for which Developer received an Excise Tax credit pursuant to Section 2.06; and provided, further, that such Eligible Expenses shall include costs for buildings, structures, site work, site improvements, furnishings, fixtures, and equipment, and expressly exclude operating costs, marketing costs, travel costs, land acquisition, legal fees for counsel to the Developer or an Affiliate, development fees, or brokers’ commissions.

“Excise Tax” means the excise tax levied and collected by the City as described in Section 2.06 hereof.

“Excusable Delays” means the delays for performance set forth in Section 7.07 hereof.

“Funding Agreement” means the agreement entered into by and between the City and the Developer’s predecessor, Day3, LLC, dated March 7, 2016.

“GAAP” means generally accepted accounting principles.

“Governing Body” means the City Council of the City.

“IRBs” means those certain industrial revenue bonds which may be used to obtain an exemption on sales taxes levied by Kansas governmental entities for construction materials, equipment and furnishings and to obtain an abatement of ad valorem property taxes as set forth in Article IV of this Agreement.

“Multifamily Residential Improvements” means the improvements described in Section 2.01(b)(ii).

“Natural Gas Improvements” means any and all gas lines and related appurtenances which are necessary, in the Developer’s reasonable discretion, to provide natural gas service to and within the Project Site.

“Parties” means the City and the Developer.

“Pay-As-You-Go CID Financing” means a method of financing pursuant to K.S.A. 12-6a34, in which the costs of the CID Improvements are financed without notes or bonds, and the costs are reimbursed as CID Sales Taxes are deposited in the CID Sales Tax Funds as set forth in Section 3.04 hereof.

“Performance Milestones” means the development milestones for the Project which are set forth on **Exhibit G** attached hereto.

“Phase A Arterial” means that portion of the Street Improvements consisting of a three-lane arterial public street, including standard turn lanes at its intersection with 175th Street, such other turn lanes and appurtenances as are required by Applicable Law and Requirements, and further including sufficient right-of-way dedicated to the City to accommodate construction by the City of a fourth lane at a future date, as generally depicted in red on **Exhibit F** attached hereto.

“Phase B Arterial” means that portion of the Street Improvements consisting of a three-lane arterial public street, including such turn lanes and appurtenances as are required by Applicable Law and Requirements, and further including sufficient right-of-way dedicated to the City to accommodate construction by the City of a fourth lane at a future date, as generally depicted in green on **Exhibit F** attached hereto.

“PILOT Agreement” means any payment-in-lieu-of-taxes agreement between the City and the Developer (or its permitted assigns) for any portion of the Project Site pursuant to Article IV hereof.

“Project” means the improvements to the Project Site as described in Section 2.01 hereof.

“Project Site” means that certain real property generally located southeast of the Interstate 35 and 175th Street interchange as legally described on **Exhibit A** and generally depicted on **Exhibit B**, each as attached hereto.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as referred to in Section 2.07(b) hereof.

“Retail Anchor” means the improvements described in Section 2.01(a)(ii) hereof.

“Sewer Improvements” means, subject in all respects to finalizing design and obtaining approvals from the Kansas Department of Health and Environment, the trunk lines and related appurtenances as generally depicted on **Exhibit C** attached hereto and which are necessary, in the City’s reasonable discretion (including discretion as to the need for, and locations of, any and all lift stations, package plants, force mains, and similar improvements), to provide adequate sanitary sewer service to the Project Site to accommodate all of the uses identified in Section 2.01 hereof. The Sewer Improvements shall not include non-trunk sewer lines necessary to provide service within the Project Site.

“State” means the State of Kansas.

“Street Improvements” means, collectively, (i) the Phase A Arterial; (ii) the Phase B Arterial; (iii) the public street improvements, including such turn lanes and appurtenances as are required by

Applicable Law and Requirements, as generally depicted in yellow on **Exhibit F** attached hereto; and (iv) the private street improvements, including such turn lanes and appurtenances as are required by Applicable Law and Requirements, as generally depicted in purple on **Exhibit F** attached hereto.

“**Term**” means that certain period from the Effective Date through that date on which this Agreement expires as set forth in Section 6.01 hereof.

“**Water Improvements**” means such water line extension and related appurtenances which are necessary, in the City’s reasonable discretion, to provide water service to the Project Site, the location of which is set forth on **Exhibit D** attached hereto. The Water Improvements shall not include water lines necessary to provide service within the Project Site.

[remainder of page left blank intentionally]

EXHIBITS

Exhibit A:	Project Site Legal Description
Exhibit B:	Project Site Map
Exhibit C:	Map of Sewer Improvements
Exhibit D:	Map of Water Improvements
Exhibit E:	Map of Electric Improvements
Exhibit F:	Map of Street Improvements
Exhibit G:	Performance Milestones
Exhibit H:	Form of Certificate of Expenditure
Exhibit I:	Form of PILOT Agreement

SCHEDULES

Schedule 4.01: IRB Origination Fees

EXHIBIT A

PROJECT SITE LEGAL DESCRIPTION

All that part of the Northwest Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows: BEGINNING at the Southwest corner of the Northwest Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 17 minutes 30 seconds West along the West line of the Northwest Quarter of said Section 29 a distance of 1363.78 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 774; thence in a Northeasterly direction along said right of way line and along a curve to the right whose initial tangent bears North 49 degrees 41 minutes 33 seconds East, having a radius of 11,309.16 feet, through a central angle of 0 degrees 10 minutes 52 seconds, an arc distance of 35.76 feet to a point; thence North 56 degrees 31 minutes 20 seconds East along said right of way line a distance of 543.85 feet to a point; thence North 68 degrees 50 minutes 34 seconds East along said right of way line a distance of 440.47 feet to a point; thence North 87 degrees 46 minutes 28 seconds East along said right of way line a distance of 1460.43 feet to a point; thence South 87 degrees 20 minutes 26 seconds East along said right of way line a distance of 327.30 feet to a point; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 14.46 feet to a point on the East line of the Northwest Quarter of said Section 29; thence South 2 degrees 05 minutes 58 seconds East along the East line of the Northwest Quarter of said Section 29 a distance of 1830.10 feet to the Southeast corner thereof; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northwest Quarter of said Section 29 a distance of 2704.50 feet to the POINT OF BEGINNING, containing 4,780,096 Square Feet or 109.7359 Acres, more or less.

Also,

All that part of the Northeast Quarter of Section 29, Township 14 South, Range 23 East, lying South and East of Interstate Highway 35, described as follows: BEGINNING at the Southwest corner of the Northeast Quarter of Section 29, Township 14 South, Range 23 East; thence North 2 degrees 05 minutes 58 seconds West along the West line of the Northeast Quarter of said Section 29 a distance of 1830.10 feet to a point on the Southeasterly right of way line of Interstate Highway 35 as established in Volume 3475, Page 762; thence North 66 degrees 35 minutes 54 seconds East along said right of way line a distance of 296.48 feet to a point; thence North 34 degrees 50 minutes 13 seconds East along said right of way line a distance of 225.00 feet to a point; thence North 11 degrees 50 minutes 40 seconds East along said right of way line a distance of 437.78 feet to a point; thence North 83 degrees 24 minutes 39 seconds East along said right of way line a distance of 188.84 feet to a point; thence North 87 degrees 58 minutes 01 seconds East along said right of way line a distance of 1050.00 feet to a point; thence North 73 degrees 02 minutes 08 seconds East along said right of way line a distance of 155.24 feet to a point on the South right of way line of 175th Street as established in Volume 4458, Page 126; thence North 87 degrees 58 minutes 01 seconds East along the South right of way line of 175th Street a distance of 744.69 feet to a point on the West right of way line of Clare Road; thence South 18 degrees 44 minutes 58 seconds East along the West right of way line of Clare road a distance of 135.66 feet to a point; thence South 1 degree 50 minutes 26 seconds East along the West right of way line of Clare Road a distance of 2500.70 feet to a point on the South line of the Northeast Quarter of said Section 29; thence South 88 degrees 39 minutes 43 seconds West along the South line of the Northeast Quarter of said Section 29 a distance of 2677.73 feet to the POINT OF BEGINNING, containing 6,656,573 Square Feet or 152.9139 Acres, more or less.

70592945.10

EXHIBIT B **PROJECT SITE MAP**



	PHASE 1	PHASE 2	PHASE 3	PHASE 4
INLINE	A: 31,200	G: 21,600	L-O: 168,400	R-T: 175,100
HOTEL	F: 50,000	---	P: 50,000 Q: 50,000	---
RESTAURANT	C: 5,700 D: 5,700 E: 5,700	I: 5,700 J: 5,700 K: 5,700	---	U: 9,000 V: 7,000
CONVENIENCE	B: 9,000	---	---	---
THEATRE	---	H: 50,000	---	---
TOTAL	107,300	88,700	268,400	191,100

FULL BUILD-OUT TOTAL: 655,500 SF

EXHIBIT C

MAP OF SEWER IMPROVEMENTS



EXHIBIT D

MAP OF WATER IMPROVEMENTS



Water One Exhibit

EXHIBIT E

MAP OF ELECTRIC IMPROVEMENTS



EXHIBIT F

MAP OF STREET IMPROVEMENTS



EXHIBIT G

PERFORMANCE MILESTONES

- City shall complete the Sewer Improvements, Water Improvements, and Electric Improvements by the earlier of (a) twenty-four (24) months following the preparation of all required plans, specifications, and permitting or (b) July 1, 2023.
- Developer shall design, fund, and construct the Phase A Arterial and complete all associated work not later than six (6) months following the date of completion of the City Infrastructure Improvements. (For illustration purposes only, if the City Infrastructure Improvements are completed on June 15, 2021, the Phase A Arterial shall be completed by December 15, 2021.)
- Developer shall design, fund, and construct the Phase B Arterial and complete all associated work not later than twenty-four (24) months following the date of completion of the City Infrastructure Improvements. (For illustration purposes only, if the City Infrastructure Improvements are completed on June 15, 2021, the Phase B Arterial shall be completed by June 15, 2023.)
- Developer shall obtain building permits for at least thirty (30) single-family residences located within the Project Site not later than twelve (12) months following the date of completion of the City Infrastructure Improvements. (For illustration purposes only, if the City Infrastructure Improvements are completed on June 15, 2021, Developer shall obtain at least thirty (30) single-family permits by June 15, 2022.) In each twelve-month period thereafter, Developer shall obtain at least thirty (30) additional single-family building permits until reaching a total of at least three hundred (300) such permits. If Developer obtains more than thirty (30) permits in any such twelve-month period, the excess will be applied to subsequent twelve-month periods.

EXHIBIT H

FORM OF CERTIFICATE OF EXPENDITURE

Date: _____

Certificate # _____

Governing Body of the
City of Gardner, Kansas

In accordance with the Development Agreement dated as of October __, 2019 (as amended from time to time, the "Agreement"), between the City of Gardner, Kansas (the "City"), and Grata Development, LLC, a Kansas limited liability company (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. To the best of my knowledge, all amounts are Eligible Expenses (as defined in the Agreement) that are reimbursable to the Developer pursuant to the Agreement and the CID Act (as defined in the Agreement).

2. All amounts have been advanced by the Developer for eligible expenses requested in this Certification and represent the fair value of work, materials or expenses.

3. No part of such amounts has been the basis for any previous request for reimbursement under the Agreement.

The Developer further certifies that the Developer is in compliance, in all respects, with all terms of the Agreement.

The total amount of reimbursement requested by this Certification is \$ _____ which amount is itemized on **Exhibit 1** attached hereto and which **Exhibit 1** includes ____ page(s), is incorporated herein by reference and has been initialed by the authorized representative of the Developer who signed this Certificate.

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____

Name: _____

Title: _____

H-1

70592945.10

Date: _____
Certificate # _____

\$ _____ Amount of eligible expenses requested by this
Certification # _____

\$ _____ Amount of eligible expenses for this
Certification # _____ Disapproved

\$ _____ Amount of eligible expenses for this
Certification # _____ Approved

CITY OF GARDNER, KANSAS

By: _____

Name: _____

Title: City Administrator

EXHIBIT 1 TO
CERTIFICATION OF EXPENDITURES

PAGE ____ OF ____

Date: _____
Certificate # _____

Description of Expense (attach additional supporting documentation)	Amount of Expense
	\$__
	\$__
	\$__
	\$__
Total Expenses	\$__
	_____ Initials of Developer

EXHIBIT I

FORM OF PILOT AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (this "Agreement"), is made and entered into as of _____, 20__, by and between _____, a _____ limited liability company (the "Company") and the **CITY OF GARDNER, KANSAS**, a municipal corporation (the "City").

For and in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the parties understand and agree as follows:

1. Tax Exemption; Payment in Lieu of Taxes. In consideration of the issuance by the City of its industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.* in the aggregate principal amount not to exceed \$_____ (the "Bonds"), in a single series, to finance the cost of acquiring a leasehold interest in certain real property and acquiring, constructing and equipping a multifamily housing project to be located at _____ (the "Project") to be leased by the Company to the City pursuant to a Base Lease (the "Base Lease"), and leased back from the City to the Company, or its successors and assigns with City consent pursuant to a Lease Agreement (the "Lease"), and in consideration of Company's execution of a Base Lease and the Lease. In further consideration of the laws of the State of Kansas (the "State") granting an exemption from ad valorem real property taxation for the period of up to ten (10) years, commencing with the first calendar year after the calendar year in which Bonds are issued ("Abatement Term") solely for the portion of the Project acquired or constructed with Bond proceeds and described in the bond trust indenture, by and between the City and the bond trustee named therein, authorizing said Bonds, Company agrees to make payments in lieu of ad valorem real property taxes (a "PILOT") in the amounts specified herein for the term of the Abatement Term in the manner provided for herein. The Project in excess of the existing assessed valuation in the calendar year in which the Bonds are issued (the "Base Year") acquired or constructed with the proceeds of the Bonds up to an aggregate amount not to exceed \$_____ is referred to herein as the "Tax Abated Project Portion".

2. Statement of Intention. The Tax Abated Project Portion consists of acquiring, constructing and equipping an approximately xx-unit multifamily housing project. The cost of acquiring, constructing and equipping the Tax Abated Project Portion is approximately \$_____.

3. Amount of Payments; Place of Payment. As permitted by K.S.A. 79-201a, and subject to the provision of this Agreement in lieu of all general ad valorem real and personal property taxes on the Tax Abated Project Portion for the ten (10) calendar years commencing with the first calendar year after the calendar year in which the Bonds are issued to finance the Tax Abated Project Portion, Company shall pay by separate check to the Treasurer of Johnson County, Kansas, or other appropriate officer as required by State law, a PILOT in an amount equal to twenty-five percent (25%) of the amount of general ad valorem real and personal property taxes for such Tax Abated Project Portion over the Base Year which would have been due and payable by Company if such Tax Abated Project Portion were taxable as determined in accordance with Section 4 below, to be distributed as and/or as a part of the general ad valorem tax collections for all taxing subdivisions in which the Project is located. In no event shall the abatement described in this Agreement have the effect of abating any mill levy which cannot be abated pursuant to Kansas law or abating any special assessment.

The PILOT shall be billed to Company by statement of the City Clerk or by Johnson County on behalf of the City issued on or about November 20th of each year and shall be paid each year of the Abatement Term as follows: one half (1/2) on or before December 20th in respect of the PILOT for the then current calendar year, and the remainder of such PILOT for such calendar year on or before May 10th of the following calendar year, or as otherwise required by law or invoice of Johnson County.

4. Calculation and Distribution of Payment. The amount of such PILOT will be determined by the Johnson County Clerk in the same manner and according to the same statutory procedure as general ad valorem taxes, real and personal, are determined, using the valuations determined by the Johnson County Appraiser's office under the same laws, rules and procedures for which real and personal property taxes are determined for all taxpayers within the taxing jurisdiction(s), including the right to appeal and challenge the valuations as determined by the Johnson County Appraiser's Office. Such payments shall be distributed to all applicable taxing subdivisions in Johnson County as provided in K.S.A. 12-1742.

5. Protest of Appraised Valuation Company will make all PILOTs required by this Agreement; however, Company reserves the right to make such payment under protest pending its timely appeal of the valuation as determined by the Johnson County Appraiser's Office. However, Company may not appeal its appraised valuation to an amount below the projected appraised valuation of the improvements (excluding land) of the Project submitted by the Company to the City for purposes of completing the cost-benefit analysis pursuant to K.S.A. 12-1749d (the "Base Valuation"), without first obtaining the City's consent, which consent shall not be unreasonably withheld. If Company appeals the appraised value and the appraised value of the Project is adjusted by either the Johnson County Appraiser's Office or by the Board of Tax Appeals to an amount below the Base Valuation, the PILOT shall automatically increase in proportion to the amount to the Project's appraised valuation falls below the Base Valuation. If the appraised value is independently adjusted below the Base Valuation by the Johnson County Appraiser during the Abatement Term as a result of market conditions and not from appeal of the Company, there shall be no adjustment in the Base Valuation. If after appeal, the valuation is adjusted downward, nothing herein shall create an obligation on behalf of the City to return all or a portion of any PILOT received by the City or any other taxing entity, however in such event, Company shall reduce its subsequent PILOT by the amount of any overpayment previously made by Company under protest. If the subsequent payment is not sufficiently large to fully credit the overpayment, the credit may be carried forward to subsequent payment(s) during the Abatement Term. If after an appeal, the valuation is increased, Company shall pay an additional amount for the year protested, calculated based on the revised valuation, with its subsequent PILOT.

6. Application of Abatement.

(a) Company shall not utilize any of the Project property for which it is requesting or receiving a tax exemption for any purposes that do not qualify for a property tax exemption pursuant to K.S.A. 79-201a *Second* or *Twenty-Fourth*.

(b) Company shall not remove any personal property purchased with proceeds of the Bonds at any time during the Abatement Term without the prior written consent of the City.

(c) The Project shall comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and regulations and all other applicable laws, rules and regulations.

The Company's failure to comply with the conditions provided in this Section shall constitute a default under this Agreement and the Lease.

7. Abatement Standards.

(a) **Minimum Investment.** The ten (10) year Abatement Term is conditioned upon the Company making a minimum \$ _____ capital investment in the Tax Abated Project Portion through the issuance of Bonds no later than _____, 20__ ("Minimum Capital Investment").

(b) Application for Abatement. The City and Company shall compile the information necessary to file the application for exemption (currently Form IRBX) with Johnson County, Kansas and/or the Kansas Board of Tax Appeals. If Company is the party required to file the application for exemption (e.g. in a lease/leaseback arrangement), Company shall file such application no later than February 15 of the year following the calendar year in which the Bonds have been issued. Company shall deliver the City a copy of the application for exemption upon submission to Johnson County, Kansas and/or the Kansas Board of Tax Appeals. Company shall be responsible for paying the application fee at the time of filing the application for exemption.

(c) Annual Certification & Administrative Fee. Each year of the Abatement Term, the Company is required to complete and submit certain information to confirm compliance with this Agreement (the “Annual Certification”). The Annual Certification shall be provided in the form and manner requested by the City and shall be submitted no later than February 10 of each year for the term of the abatement unless otherwise agreed, in writing, by the City. The information contained in the Annual Certification shall be used by the City Clerk to make its annual certification of compliance required by the Johnson County Treasurer. [The Annual Certification shall be accompanied by the City’s annual, non-refundable administrative fee.] Failure to provide the Annual Certification or pay the required administrative fee shall be an Event of Default hereunder.

8. Inspection. The City or its duly authorized agents may, upon reasonable request, inspect the Project and all books and records of Company for compliance with this Agreement. Upon written request, Company agrees to reasonably cooperate with the City to provide evidence of its compliance with the terms of this Agreement.

9. Approval of Exemption. This Agreement is conditioned on the issuance by the Kansas Board of Tax Appeals of an order exempting the Tax Abated Project Portion from ad valorem taxation in accordance with Kansas law, including K.S.A. 79-201a *et seq.* or K.S.A. 74-50,115. The City will utilize its commercially reasonable efforts to facilitate this process on behalf of Company.

10. Events of Default; Remedies.

(a) If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” hereunder:

(1) the Company shall fail to pay any PILOT in a timely manner or perform any of its obligations hereunder, provided the Company shall be provided written notice of any such default and a thirty (30) day period to cure the same;

(2) the Company shall breach any covenant contained herein or any representation of the Company contained herein shall prove to be materially false or erroneous; provided the Company shall be provided written notice of any such default and a thirty (30) day period to cure the same;

(3) the Company shall fail to comply with any of the provisions of this Agreement, including but not limited to Sections 7 or 8 herein after written notice and a thirty (30) day cure period; or

(4) the Company shall be in default under the Lease after any applicable notice and cure period set forth therein.

(b) If such Event of Default occurs, this Agreement may be terminated by written notice to the Company from the City. Such termination shall be effective immediately following delivery of such written notice, subject to subsection (d). Upon the termination of this Agreement, the Company shall make a payment to the City (or as the City may otherwise direct) in an amount equal to the sum of (i) all due but unpaid PILOTs attributed to prior calendar years, (ii) the pro rata total PILOTs that would be due with respect to the current calendar year, (iii) the pro rata amount of any ad valorem real property taxes that would be due for the remaining portion of the current calendar year assuming the Tax Abated Project Portion of the Project were not Exempt Property, and (iv) the amount of any costs, expenses and attorneys' fees incurred by the City as a result of such Event of Default and in enforcing this Agreement.

(c) Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Kansas law on overdue ad valorem taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem taxes that are not paid when due shall be subject to the same penalties imposed by Kansas law on overdue ad valorem taxes.

(d) The first time Company should fail to make any required payment hereunder, the City will provide Company thirty (30) days' notice of its intention to terminate this Agreement and provide it the opportunity to cure within the thirty (30) day period. Any subsequent time the Company should fail to make any required payment hereunder, the City will provide Company five (5) days' notice of its intention to terminate this Agreement and provide it the opportunity to cure within the five (5) day period. No notice is required to terminate this Agreement for a default under the Lease that is not cured within the time period permitted under the Lease.

(e) This Agreement is conditioned upon the issuance of Bonds for the acquisition, construction and equipping of the Tax Abated Project Portion. This Agreement shall automatically terminate without notice or opportunity to cure on _____ unless (i) the Bonds have been issued by the City, or (ii) the Company has obtained from the City a building permit for the Project and is diligently pursuing construction to completion.

11. General Matters

(a) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.

(b) **Assignment.** This Agreement may not be assigned and the benefits of this Agreement may not be transferred to any assignee of the Lease without the prior written consent of the City which will not be unreasonably delayed or withheld, provided that the City may condition any consent upon execution and delivery of an assignment and assumption agreement satisfactory to the City. Notwithstanding the foregoing, the City hereby consents to the assignment of this Agreement to _____ ("_____"), upon delivery to the City of a written assignment and assumption agreement satisfactory to the City or a copy of certificate of merger of Company into _____.

(c) **Titles and Subheadings.** Titles and subheadings used in this Agreement are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

(d) **No Waiver.** No waiver by the City of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach.

(e) **Notice.** All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

(i) To the Company:

Travis Schram, President
Grata Development, LLC
6300 W. 143rd Street, Suite 200
Overland Park, Kansas 66223

With copies to:

Curtis Petersen, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

(ii) To the City:

Jim Pruetting, City Administrator
City of Gardner
120 E. Main Street
Gardner, KS 66030

With copies to:

Ryan Denk, Esq.
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

and

Tyler Ellsworth, Esq.
Kutak Rock LLP
2300 Main Street, Suite 800
Kansas City, Missouri 64108

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

(f) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Kansas.

(g) **Entire Agreement.** Subject to the Bond documents, this Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This Agreement may only be modified or amended through the Bond documents or upon written instrument executed by the parties required to consent to such amendment.

(h) Authority. The signatories to this Agreement covenant and represent that each is fully authorized to enter into and to execute this Agreement on behalf of the above named party; the Company further represents that it has authority to bind the property upon which the Project is located.

(i) No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

(j) Electronic Transactions. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first written above.

CITY OF GARDNER, KANSAS,
a Kansas municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

GRATA DEVELOPMENT, LLC,
a Kansas limited liability company

By: _____
Travis Schram
President

SCHEDULE 4.01

IRB ORIGINATION FEES

- City's standard origination fee for IRBs is 1.0% of par.
- For IRBs issued for Multifamily Residential Improvements under this Agreement, City's origination fee shall be:
 - 1.0% of par for first \$15,000,000 in principal;
 - and 0.5% of par in excess of first \$15,000,000.